UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

NOV 0 5 2003

Mimi Drew, Director
Water Resource Management
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Re: Amendments to Everglades Forever Act

Dear Ms. Drew:

The Environmental Protection Agency (USEPA) has recently completed a review of the amendments to the Everglades Forever Act (EFA) enacted May 20, 2003 and July 1, 2003, (SB 626, Ch. 2003-12, Laws of Florida, and SB 54A, Ch. 2003-394, Laws of Florida). USEPA Region 4 has concluded that these amendments are not, at this time, new or revised water quality standards and therefore are not subject to approval or disapproval under section 303(c)(3) of the Clean Water Act. A copy of our decision document is attached.

As noted in the decision document, USEPA has no duty under Clean Water Act section 303(c)(3) to approve or disapprove a state enactment unless it is a new or revised water quality standard submitted to USEPA. The State has not submitted the EFA amendments to USEPA nor taken the position that the amendments are a change to standards. However, because of the importance of the Everglades and its restoration, and in light of the 1997 decision of 11th Circuit Court of Appeals, Region 4 decided to undertake an independent review of the EFA amendments to determine whether they constitute a new or revised water quality standard at this time.

Should subsequent events or new information indicate that these amendments may effect changes in Florida's water quality standards, Region 4 will reconsider their status at that time.

If you have any questions concerning this, please do not hesitate to call me at 404/562-9470 or Gail Mitchell, Chief of the Standards, Monitoring and Total Maximum Daily Load Branch, at 404/562-9234.

Sincerely,

James D. Giattina, Director
Water Management Division

Attachment

DETERMINATION CONCERNING
THE EVERGLADES FOREVER ACT

November 5, 2003

I. Executive Summary

The U.S. Environmental Protection Agency's (USEPA's) Region 4 Office has reviewed the amendments to the Everglades Forever Act (EFA) enacted May 20, 2003 and July 1, 2003,[1] and, for the reasons discussed below, has concluded that these amendments are not, at this time, new or revised water quality standards and therefore are not subject to approval or disapproval under section 303(c)(3) of the Clean Water Act (CWA or Act). However, as discussed below, should subsequent events or new information indicate that these amendments may effect changes in Florida's water quality standards, Region 4 will reconsider their status at that time.

II. Introduction/History

USEPA began this current review as a result of the 1994 EFA being amended by the Florida Legislature in 2003. Previously, in 1998, Region 4 had reviewed the entire EFA and concluded that it was not a change in state water quality standards, but merely authorized the State to take future actions, such as the development of a numeric phosphorus criterion, that would at that time be a change in water quality standards subject to review. The initial 1998 review was an outgrowth of litigation that had been brought by the Miccosukee Tribe of Indians of Florida in 1995.[2] After Region 4 filed the 1998 Determination with the District Court, the Court disagreed with Region 4 and ultimately found that Paragraph 4(f) of the EFA was a change in water quality standards, ordering Region 4 to review that section under the CWA.[3] Region 4 issued its 1999 Determination in compliance with that order. For a detailed summary of the EFA and its background, including the litigation that led up to the original 1994 statute, the subsequent

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[1] SB 626, Ch. 2003-12, Laws of Florida, and SB 54A, Ch. 2003-394, Laws of Florida, which amended the EFA, Fla. Stat. Ann. §373.4592, as signed into law in May 1994.

[2] Miccosukee Tribe of Indians v. US, Case No 95-0533-CIV-Davis, (S.D. Fla.). On appeal from summary judgment, the 11th Circuit Court of Appeals remanded the issue as to whether the EFA was a change in water quality standards back to the District Court for consideration. The 11th Circuit found that where a state has not submitted to USEPA what is allegedly a new or revised standard, at least in some circumstances USEPA must make its own determination of whether there is a change to standards. (See Miccosukee Tribe of Indians v. United States, 105 F. 3d. 599 (1997)). Region 4 then issued the 1998 Determination.

[3] Miccosukee Tribe of Indians v. United States, September 14, 1998 Omnibus Order, Case No. 95-533-CIV-Davis (S.D. Fla.).

litigation concerning the EFA, and a general description of the Everglades, see the 1998 and 1999 Determinations.[4]

III. Statutory and Regulatory Background

Under section 303(c) of the CWA, water quality standards consist of three principal elements: (1) designated "uses" of the state's waters, such as public water supply, recreation, propagation of fish, or navigation; (2) "criteria" specifying the amounts of various pollutants which may be present in those waters without impairing the designated uses, usually expressed in narrative form or numeric concentrations; and (3) an antidegradation policy providing for protection of existing water uses and limitations on degradation of high quality waters. USEPA has promulgated regulations at 40 CFR Part 131 which describe the minimum requirements for these three elements. Additional guidance is contained in USEPA's Water Quality Standards Handbook.[5]

Under the CWA, USEPA is responsible for reviewing standards adopted by the states to ensure their consistency with the requirements of the Act. On April 27, 2000, USEPA published 40 CFR § 131.21(c)(2), which now requires USEPA approval of new and revised standards adopted by States in order for those new or revised standards to be effective for CWA purposes.[6] Under section 303(c), there are two distinct mechanisms by which USEPA oversees state development of water quality standards. First, pursuant to section 303(c)(2)(A), states submit all new or revised standards to USEPA for approval or disapproval.[7] Under section 303(c)(3),

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[4] See 1998 Determination, at 1-2 and 7-9, and 1999 Determination, at 1-5.

[5] Water Quality Standards Handbook, USEPA-823-B-93-002, September 1993.

[6] 40 CFR 131.21(c)(2) provides in pertinent part:

If a State or authorized Tribe adopts a water quality standard that goes into effect under State or Tribal law on or after May 30, 2000, then once USEPA approves that water quality standard, it becomes the applicable water quality standard for purposes of the Act unless USEPA has promulgated a more stringent water quality standard for the State or Tribe that is in effect, in which case the USEPA promulgated water quality standard is the applicable water quality standard for purposes of the Act until USEPA withdraws the Federal water quality standard.

[7] Section 303(c)(2)(A) of the CWA provides, in pertinent part:

Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such uses. Such standards shall be such

USEPA either approves or disapproves these standards within 60 or 90 days, respectively, of their submittal.[8] Second, section 303(c)(4)(B) allows USEPA, even in the absence of any submission of new or revised standards by a state, to publish revised water quality standards for the state "in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of the Act." This latter provision allows USEPA to assess the continued sufficiency of previously approved standards in light of changed circumstances or new data, and also ensures that states cannot thwart the goals of the CWA by failing to submit new or revised water quality standards to USEPA.

However, USEPA has no duty under section 303(c)(3) to approve or disapprove a state enactment unless it is a new or revised standard submitted to USEPA. As noted above, the Eleventh Circuit Court of Appeals has held that, at least in some circumstances, where a state declines to submit, or has not submitted, to USEPA what may be a new or revised standard, USEPA must make its own determination as to whether there is a change to standards, and if there is, approve or disapprove the change. The State has not submitted the EFA amendments to USEPA nor taken the position that they are a change to standards. However, because of the importance of the Everglades and its restoration, Region 4 decided to undertake an independent review of the EFA amendments to determine whether they constitute a new or revised water quality standard. As discussed below, we concluded that, at this time, the amendments do not constitute a change in state water quality standards.

IV. Previous Determination

As discussed above,[9] upon order from the court, USEPA reviewed paragraph 4(f) of the original EFA as a change to standards in 1999 and found that it was an approvable compliance schedule implementing a water quality standard for a specific group of dischargers. In reviewing the provisions of paragraph 4(f), Region 4 considered them in the context of the EFA as a whole. Thus, although Region 4 did consider other provisions of the EFA as support for approval of the

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as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter...

[8] Section 303(c)(3) of the CWA provides, in pertinent part:

If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this chapter, such standard shall thereafter be the water quality standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this chapter, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements...

[9] See Introduction/History, infra,

compliance schedule, Region 4's discussion of those other provisions was not a determination that those provisions were themselves water quality standards.[10]

V. EFA Amendments

Two sets of amendments to the EFA were signed into law this year: SB 626, which became effective May 20, 2003, and SB 54A (sometimes referred to as the "Glitch Bill"), which became effective July 1, 2003. Since, in some cases, the second set of amendments modified the first set of amendments, for purposes of this analysis, Region 4 considered the two sets of amendments together, rather than independently. Region 4 considered certain of the amendments to be substantive changes, and those are specifically discussed below. Their full text is set out in Appendix A. Other amendments (such as the deletion of now historical deadlines that had already been met) were not germane to today's determination. Region 4 has included both complete sets of amendments, as published on the Secretary of State's web page, in Appendix B.

The Definitions part of the EFA, subsection 2, was revised to add definitions for "Best Available Phosphorus Reduction Technology," "Long Term Plan," and "Technology-Based Effluent Limitation."

The Long Term Plan section of the EFA, subsection 3, was amended to add 3(b), 3(c), 3(d), and 3(e). These provisions include legislative findings regarding the activities directed in the Long Term Plan, establish that revisions to the Long Term Plan shall be based on an adaptive management approach, and require the Department of Environmental Protection (FDEP) to approve revisions to the Long Term Plan and incremental phosphorus reduction measures. These revisions recognize that the Long Term Plan contains two phases, and that the second phase must be approved by FDEP. These revisions also specify that achievement of standards relating to the phosphorus criterion for the Everglades will be determined through the use of a network of monitoring stations.

Paragraph 4(e) of the original EFA provided for adoption, through rulemaking, of a numeric criterion for phosphorus for the Everglades Protection Area (EPA).[11] New language was

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[10] In fact, in 1998, USEPA Region 4 had reviewed the EFA section by section, and found no change in water quality standards at that time (certain provisions were found to authorize future changes to State water quality standards that would be reviewable by USEPA upon adoption and submittal by the State). Although the September 14, 1998 Omnibus Order "set aside" the 1998 determination, by only identifying paragraph 4(f) as a change in water quality standards the court tacitly acknowledged the other provisions were not changes in standards. (See Miccosukee Tribe of Indians v. United States, September 14, 1998 Omnibus Order, Case No. 95-533-CIV-Davis (S.D. Fla.) at 32).

[11] In the 1999 review of the EFA, USEPA stated: "When the State of Florida adopts a numeric criterion for phosphorus, or the default criterion of 10 ppb becomes effective under the

added to subparagraphs 4(e)(2) and (e)(3) authorizing that rule to include moderating provisions, which may apply to discharges to unimpacted areas. The new provisions also direct FDEP to issue permits during the first phase of the Long Term Plan that include BAPRT, as well as technology-based effluent limitations.

Subsection 10 of the original EFA was modified to require that FDEP implement the pre-2006 projects and strategies of the Long Term Plan by December 31, 2006, and to acknowledge that the state water quality standards for the EPA may include moderating provisions. New provisions were also added to subsection 10 that require that the South Florida Water Management District (SFWMD) apply for permit modifications by December 31, 2003, in order to incorporate the pre-2006 projects and strategies of the Long-Term Plan for the Everglades Construction Project and other SFWMD works delivering water to the EPA.

VI. Analysis

In order to determine whether the EFA amendments were a change to Florida's existing water quality standards, we considered whether the amendments established a new use designation or modified a previous one, or whether they established a new water quality criterion or modified the existing narrative criterion for nutrients. As part of the criteria analysis, we considered whether the amendments modified a criterion by establishing a new compliance schedule for attaining the criterion or modifying the existing compliance schedule in paragraph 4(f).[12] We also considered whether the changes to paragraph 3(e) fell within the scope of 40 CFR § 131.13, which provides for USEPA review, under CWA section 303(c), of certain state policies affecting water quality standards.

Existing Water Quality Standards

All State waters that are regulated under the authorities of the EFA are designated in Florida Administrative Code (FAC) 62-302.400 as Class III waters. The designated uses of Class III waters include: "Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife." The designation of these waters by the State as Class III has been approved by USEPA and, therefore, these uses are effective for all purposes of the Clean Water Act.

EFA, that numeric criteria will be a new water quality standard which must be submitted to USEPA pursuant to 40 CFR Part 131 for review, and will require consultation under the Endangered Species Act . . . Similarly, any new interpretation of the phosphorus criterion, any variance, site specific alternative criterion or other similar interpretation of the EFA that changes standards would require review by USEPA as a change to Water Quality Standards." 1999 Determination at n2.

[12] The 2003 amendments to the EFA do not revise Florida's antidegradation regulations.

The supporting water quality criteria for the Class III designated uses are contained in FAC 62-302.500 (Surface Waters: Minimum Criteria, General Criteria), FAC 62-302.530 (Table: Surface Water Quality Criteria), and FAC 62-302.520 (Thermal Surface Water Criteria). The water quality criteria contained in these portions of the FAC have been approved by USEPA and are effective for all purposes of the Clean Water Act.

The criterion of particular concern in the Everglades involves the Class III water quality criteria for nutrients; the primary nutrient of concern is phosphorus. Narrative criteria for nutrients have been adopted by the State, which include the following:

> FAC 62-302.530(48)(a): [For all classes of State waters] The discharge of nutrients shall continue to be limited as needed to prevent violations of other standards contained in this chapter. Man-induced nutrient enrichment (total nitrogen or total phosphorus) shall be considered degradation in relation to the provisions of section 62-302.300, 62-302.700, and 62-4.242, F.A.C.
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> FAC 62-302.530(48)(b): [For Classes I, II, and III] In no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora or fauna.

None of the new or revised provisions of the EFA changes the designated uses assigned by the State to the EPA, or the water quality criteria needed to support the designated use of the EPA. Clearly, none of the amendments establish a criterion at this time, and it is our conclusion that none of them indirectly modifies an existing criterion.

Definitions and Network of Monitoring Stations

Subsection 2 was modified to include a definition of BAPRT, but this definition only addresses technologies needed to "reduce outflow concentrations of phosphorus so as to achieve the phosphorus criterion" of the EPA; it does not purport to define that criterion. Other definitions and references in this subsection also relate to the "outflow concentrations" of phosphorus, and do not modify any ambient water quality criteria previously adopted for the Class III waters of the EPA.

Paragraph (3)(e) was added to the EFA to specify that a "network of monitoring stations" will be used in determinations of whether levels of phosphorus "achieve water quality standards." This additional provision does not by itself modify the narrative water quality criterion for nutrients previously in effect for the EPA.[13]

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[13]If the state decides to include specific monitoring stations or limitations on monitoring stations in the numeric phosphorus criterion rule, USEPA, at that time, will consider whether the monitoring network is part of the water quality standard and/or a limitation on implementation.

Long Term Plan

Identification of the Long Term Plan in subsection 3 as the means to achieve water quality standards does not in itself constitute a new or revised water quality standard. Federal regulations for water quality standards at 40 CFR § 131.13 state that "States may, at their discretion, include in their State standards, policies generally affecting their application and implementation, such as mixing zones, low flows and variances. Such policies are subject to USEPA review and approval." To determine whether a particular state provision falls within the scope of 40 CFR § 131.13, and hence is subject to review under Clean Water Act section 303(c), USEPA asks three questions.

The first question is "Does the provision *define* the use or the criteria to protect the use or explain the state's antidegradation policy?" If so, then the provision falls under the scope of 40 CFR 131.13. The best examples of these statutory or regulatory provisions are variance procedures which constitute temporary changes to uses based on their attainability under 40 CFR § 131.10(g), which are then reflected in different criteria to protect the temporary change to the use, and mixing zone policies which maintain the designated use for the water body as a whole, but establish specific places where alternative criteria apply.

The second question relates to assessment: "Does the provision *provide* detailed information on how to *assess* whether a particular use and associated criteria are achieved?" The best example of these are procedures to assess the attainment of the underlying narrative criteria and water quality standards to determine if waters are impaired under section 303(d). If the state intends to include these provisions in its standards, then these provisions are within the scope of 40 CFR § 131.13. If the state chooses not to include these provisions in its water quality standards, then the provisions may be analyzed by USEPA during its review of a state's assessment decisions as reflected in the CWA section 303(d) list submittal, but EPA's decision regarding whether to approve the state's assessment decisions would be based on the underlying water quality standards, not the assessment provisions. In that circumstance, the underlying approved water quality standard would be the applicable water quality standard and the procedures to assess attainment must properly implement that approved standard.

The third question is "Does the provision *identify* or *describe* activities or procedures for establishing source controls to meet water quality standards?" If so, then these provisions are not water quality standards and are not subject to USEPA review under CWA section 303(c) authorities. TMDLs are reviewed under 40 CFR § 130.7, and new NPDES provisions which are permit program modifications are reviewed under 40 CFR § 123.62(b). The best examples of policies identified by this third question are wasteload allocation procedures or watershed restoration plans that do not alter the goals for protection, but instead specify how it is to be done. Another example would be a formula for developing water quality-based effluent limits in NPDES permits under 40 CFR § 122.44. These types of provisions may be subject to USEPA oversight under Clean Water Act sections 303(d) or 402.

The identification of the Long Term Plan in the 2003 EFA clearly falls into the category of provisions that identify or describe actions for establishing source controls, and, as such does not establish new or revised water quality standards at this time.

Moderating Provision

Subparagraph (4)(e)(2) was modified to authorize, but not require, the inclusion of moderating provisions as part of the future rulemaking to establish a phosphorus criterion. Similarly, subsection 10, as amended, references these moderating provisions in connection with the future phosphorus criterion. However, nothing in the amendments to subparagraph 4(e)(2) or subsection 10 defines the type of moderating provision to be developed, the extent of change allowed through the moderating provisions, or whether the moderating provision applies to outflows from phosphorus sources or to the ambient water quality criteria supporting the designated uses of the EPA. Therefore, the references to "moderating provisions" only creates the possibility for future enactment of these "moderating provisions" for the standards applicable to the EPA, and do not themselves change the designated uses or water quality criteria of the EPA at this time.

In summary, the EFA's authorization to establish moderating provisions for the designated uses and water quality criteria of the EPA is only the first step in a process that could result in changes to these uses and criteria. Only at the completion of the State's administrative processes, and the challenges to these processes, will the outcome of this new authority potentially be final under State law and, if so, certain enough for USEPA review.[14] Region 4's duty to act on these new authorities occurs at the completion of these processes. Therefore, USEPA has no basis for acting on these provisions at this time under section 303(c) authorities.

Default Criterion

Paragraph 4(e)(2) of the original EFA provides for a default phosphorus criterion of 10 parts per billion in the event that the State does not adopt a criterion by rule by December 31, 2003 (this was not changed by the 2003 amendments). Because of the pending appeals in the numeric criterion rulemaking process, it appears likely that such a default criterion will go into effect under state law as of January 1, 2004. If that occurs, USEPA will review that water quality criterion as a new standard at that point in time.

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[14] The Environmental Regulation Commission (ERC) adopted a proposed rule in July, 2003. The rule has been challenged administratively under State law by several interested parties; those challenges have not yet been resolved. USEPA is aware of the draft numeric criterion rule but since it is under challenge and not final, we have not considered it during this review. The phosphorus rule, since it identifies a numeric phosphorus criterion, will, when final, be reviewed by USEPA as a change in state WQS.

Paragraph 4(f)/Compliance Schedules

As explained in Region 4's 1999 review of paragraph 4(f), a compliance schedule may comprise a de facto modification of an existing criterion by suspending its enforcement. Accordingly, in conformance with Judge Davis' order, Region 4's 1999 determination considered paragraph 4(f) of the original EFA as a compliance schedule until 2006 for the EFA and C-139 Basin permittees to come into compliance with State water quality standards. For the reasons discussed in that determination, Region 4 concluded that schedule was consistent with the requirements of the CWA. As part of our review of the 2003 Amendments to the EFA, we examined whether those amendments modified the 4(f) compliance schedule.

Subparagraph 4(f)(3) of the original EFA provides, in pertinent part, that permittees in the EAA and the C-139 basin who are in full compliance with their permits under chapters 40E-61 and 63, have paid the taxes required under the Everglades program and are in compliance with 4(a)(8), if applicable, "shall not be required to implement additional water quality improvement measures, prior to Dec. 31, 2006 . . ." Subparagraph 4(f)(4) further provided that as of December 31, 2006, all such permits, including those issued prior to that date "shall require implementation of additional water quality measures," such that "[as] of that date, no permittee's discharge shall cause or contribute to any violation of water quality standards in the Everglades Protection Area." The 2003 amendments did not change either of these deadlines. Certain provisions of the 1994 EFA that Region 4 reviewed in support of its 1999 approval of Paragraph 4(f) have changed (e.g., through the incorporation of the timing of certain actions during the initial phase of the Long Term Plan). However, these changes do not alter the compliance schedule we approved in 1999. It is our conclusion that the 2003 amendments have not changed the obligation in the 1994 EFA for the permittees in EAA and C-139 Basin to meet standards by December 31, 2006.

We also considered whether the new language in the 2003 amendments established a separate compliance schedule suspending enforcement of existing water quality standards beyond December 31, 2006. Subparagraph 4(e)(2) authorizes the adoption of moderating provisions for the numeric phosphorus criterion extending to December 2016. Such moderating provisions, when (and if) adopted and effective under state law, could constitute a compliance schedule. However, as discussed above, this provision merely authorizes adoption of such moderating provisions through subsequent rulemaking (and imposes some constraints on that rulemaking); it does not establish and implement a new compliance schedule. Accordingly, subparagraph 4(e)(2) is not itself a new or revised compliance schedule for water quality standards.

We then looked at the other substantive amendments, in particular the amendments dealing with the Long Term Plan, to see whether, viewed collectively, they established a compliance schedule as part of water quality standards. Specifically, we considered whether those amendments established a compliance schedule through 2016 for complying with the new phosphorus criterion. As explained below, it is our conclusion that the amendments have not done so at this time. However, if subsequent actions alone or based on the Amended EFA revise

or establish compliance schedules in the future, we will review those actions under section 303(c)(3) at that time.

Amended subsection 2 of the EFA contains several new definitions (i.e., "Best Available Phosphorus Reduction Technology," "Long-Term Plan," and "Optimization.")[15] However, these definitions do not prescribe the time for compliance with a narrative or numeric criterion or provide a relief mechanism from compliance with such criteria.

The amendments also include new findings in subsection 3. While these clearly contemplate that the Long Term Plan for reducing phosphorus entering the EPA will extend beyond 2006 (the initial phase runs until 2016, and there is to be a second phase after that), in our view, they do not set a new, later compliance date without further rulemaking. For example, paragraph 3(b) states, ". . . The pre-2006 projects identified in the Long Term Plan shall be implemented without delay, and revised with the planning goal and objective of achieving the phosphorus criterion to be adopted pursuant to subparagraph (4)(e)(2). . . ." Paragraph 3(d) calls for a review by FDEP after 10 years to "insure that the Everglades Protection Area is achieving water quality standards." (Emphasis added). (See also discussion concerning subsection 10 below).

Subparagraph 4(e)(3) of the original EFA described how FDEP was to establish permit limitations to prevent an imbalance in the natural populations of flora or fauna in the EPA (essentially the narrative nutrient criterion), and to provide a net improvement in areas already impacted. It also provided that compliance with the phosphorus criterion was to be based on a long term geometric mean of concentration levels to be measured at certain sampling stations. The 2003 amendments did not alter these requirements but did add a sentence which states: "During the implementation of the initial phase of the Long Term Plan, permits issued by the department shall be based on BAPRT, and shall include technology-based effluent limitations consistent with the Long Term Plan." Whether in implementation this provision results in changes to WQS will depend on what limitations and schedules are included in the permits.[16] It does not, on its face, foreclose inclusion of additional, or more stringent, effluent limitations to achieve water quality standards. As part of our normal permit review and triennial review, USEPA will monitor how the State implements subparagraph 4(e)(3). For example, based on our understanding of the EFA, upcoming revisions to NPDES permits for the stormwater treatment areas (STAs) may reflect the 2006 compliance date in the original EFA or a compliance schedule consistent with 40 CFR § 122.47 for a new water quality criterion. As part of our normal permit review, USEPA will review the justification for any compliance schedule at that time. If the

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[15] See Appendix A.

[16] The definition of BAPRT refers to the use and enhancement of BMPs and STAs to achieve the criterion in the EPA but does not impose limits per se in application of this technology. For the Stormwater Treatment Areas (STAs), the Long Term Plan, as currently drafted, identifies enhancements to the STAs to be constructed prior to 12/31/2006.

permits reflect changed WQS compliance schedules, such changed water quality standard compliance schedules would require USEPA review and approval before they can be used for CWA purposes, such as writing NPDES permits. See 40 CFR § 131.21(c).

Finally, the 2003 amendments amend subsection 10 of the original EFA.[17] Subsection 10 addresses permits for activities undertaken by FDEP and SFWMD (as opposed to the permittee in paragraph 4(f)) to meet water quality standards. The unnumbered introduction adds language referencing implementation of the pre-2006 parts of the Long Term Plan, but retains the requirement to "take such action as may be necessary . . . so that water delivered to the Everglades Protection Area achieves State water quality standards" in all parts of the Everglades Protection Area.

While paragraph 10(a) was extensively reworded by the amendments, both the original version and the new version require submission by December 31, 2003, of proposed permit modifications to reflect changes to the Everglades Construction Project designed to meet water quality standards. The amended language does not specifically refer to the 2006 deadline for meeting standards including the numeric phosphorus criterion as in the original version, but instead reiterates the language from subparagraph 4(e)(3), discussed above, which requires permits issued by FDEP to be based on BAPRT and to include technology-based effluent limitations consistent with the Long Term Plan. USEPA will continue to review the permits, including the modifications required by 10(a), to determine how the these provisions are implemented.

Summary

In summary, the 2003 amendments, and their subsequent implementation, warrant close scrutiny. It is Region 4's conclusion that the amendments have not, at this time, established a new or revised compliance schedule for achieving Florida's currently applicable water quality standards.

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[17]The original paragraph 10(a), despite its cross- reference of the 2006 date, was not considered by Judge Davis or Region 4 to be a water quality standard requiring Region 4's review and approval/disapproval. As discussed above, USEPA considered subsection 10 during our review of paragraph 4(f) as providing support for the compliance schedule, but relied on the 2006 date contained within paragraph 4(f) as the basis for setting the compliance schedule. That date has not changed. The original subsection 10 did require compliance with water quality standards including the numeric criterion by 2006 while the new subsection 10 requires implementation of the pre-2006 projects of Long Term Plan by 2006 which are, by definition, designed to achieve compliance in the near term. Thus, until the permit modifications are issued and the projects are finished, it will not be clear whether a date has changed and if so, by what means and what the new date is.

VII. Conclusion

For the reasons summarized above, and based on the information available at this time, the amendments to the EFA enacted on May 20, 2003 and July 1, 2003 do not comprise new or revised State water quality standards. These amendments authorize the State to take an action in the future through the adoption of moderating provisions for standards related to the phosphorus criterion. However, the outcome of such amended authority is unknown until the adoption of additional rules or regulations (or, alternatively, through a process resulting in the default criterion replacing the current narrative criterion for the Everglades) has been completed and they are effective under State law. Similarly, the amendments to the EFA do not establish a revised compliance schedule, but only set the stage for subsequent regulatory rulemaking, which may or may not establish a new compliance date for the standards related to the phosphorus criterion.

USEPA, as part of our normal reviews of permit and WQS will continue to monitor implementation of Everglades restoration. If future actions alter our understanding of the EFA, or are changes to WQS themselves, we will review those changes under section 303(c)(3).

Date: 11/5/03

James D. Giattina, Director
Water Management Division
USEPA Region 4

Appendix A

EFA Subsection 2 - Definitions. The following new definitions were added to the EFA.

(a) "Best Available Phosphorus Reduction technology" or "BAPRT" means a combination of best management practices (BMPs) and stormwater treatment areas (STAs) which includes a continuing research and monitoring program to reduce outflow concentrations of phosphorus so as to achieve the phosphorus criterion in the Everglades Protection Area.

(j) "Long-Term Plan" or "Plan" means the district's "Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-Term Water Quality Goals Final Report" dated March 2003, as modified herein.

(p) "Technology-based effluent limitation" or "TBEL" means the technology-based treatment requirements as defined in Rule 62-650.200, Florida Administrative Code.

EFA Subsection 3 - Everglades Long Term Plan. Additional language, 3(b), 3(c), 3(d) and 3(e) was added to this subsection.

(b) The Legislature finds that the most reliable means of optimizing the performance of STAs and achieving reasonable further progress in reducing phosphorus entering the Everglades Protection Area is to utilize a long-term planning process. The Legislature finds that the Long-Term Plan provides the best available phosphorus reduction technology based upon a combination of the BMPs and STAs described in the Plan provided that the Plan shall seek to achieve the phosphorus criterion in the Everglades Protection Area. The pre-2006 projects identified in the Long-Term Plan shall be implemented by the district without delay, and revised with the planning goal and objective of achieving the phosphorus criterion to be adopted pursuant to subparagraph (4)(e)2 in the Everglades Protection Area, and not based on any planning goal or objective in the Plan that is inconsistent with this section. Revisions to the Long-Term Plan shall be incorporated through an adaptive management approach including a process development and engineering component to identify and implement incremental optimization measures for further phosphorus reductions. Revisions to the Long-Term Plan shall be approved by the department. In addition, the department may propose changes to the Long-Term Plan as science and environmental conditions warrant.

(c) It is the intent of the Legislature that implementation of the Long-Term Plan shall be integrated and consistent with the implementation of the projects and activities in the Congressionally authorized components of the CERP [Comprehensive Everglades Restoration Plan] so that unnecessary and duplicative costs will be avoided. Nothing in this section shall modify any existing cost share

or responsibility provided for projects listed in s. 528 of the Water Resources Development Act of 1996 (110 Stat. 3769) or provided for projects listed in section 601 of the Water Resources Development Act of 2000 (114 Stat. 2572). The Legislature does not intend for the provisions of this section to diminish commitments made by the State of Florida to restore and maintain water quality in the Everglades Protection Area, including the federal lands in the settlement agreement referenced in paragraph (4)(e).

(d) The Legislature recognizes that the Long-Term Plan contains an initial phase and a 10-year second phase. The Legislature intends that a review of this act at least 10 years after implementation of the initial phase is appropriate and necessary to the public interest. The review is the best way to ensure that the Everglades Protection Area is achieving state water quality standards, including phosphorus reduction, and the Long-Term Plan is using the best technology available. A 10-year second phase of the Long-Term Plan must be approved by the Legislature and codified in this act prior to implementation of projects, but not prior to development, review, and approval of projects by the department.

(e) The Long-Term Plan shall be implemented for a initial 13-year phase (2003-2016) and shall, achieve water quality standards relating to the phosphorus criterion in the Everglades Protection Area as determined by a network of monitoring stations established for this purpose. Not later than December 31, 2008, and each 5 years thereafter, the department shall review and approve incremental phosphorus reduction measures.

EFA Subsection 4 - Everglades Program. New language added to (e)(2) and (e)(3).

(e)(2) . . . . The department's rule adopting a phosphorus criterion may include moderating provisions during the implementation of the initial phase of the Long-Term Plan authorizing discharges based upon BAPRT providing net improvement to impacted areas. Discharges to unimpacted areas may also be authorized by moderating provisions, which shall require BAPRT, and which must be based upon a determination by the department that the environmental benefits of the discharge clearly outweigh potential adverse impacts and otherwise comply with antidegradation requirements. Moderating provisions authorized by this section shall not extend beyond December 2016 unless further authorized by the Legislature pursuant to paragraph (3)(d).

(e)(3) . . . . During the implementation of the initial phase of the Long-Term Plan, permits issued by the department shall be based on BAPRT, and shall include technology-based effluent limitations consistent with the Long-Term Plan. . . .

EFA Subsection 10 - Long-Term Compliance Permits. Modified with new language added.

(10) LONG-TERM COMPLIANCE PERMITS. -- By December 31, 2006, the department and the district shall take such action as may be necessary to implement the pre-2006 projects and strategies of the Long-Term Plan so that water delivered to the Everglades Protection Area achieves in all parts of the Everglades Protection Area state water quality standards, including the phosphorus criterion and moderating provisions.

(a) By December 31, 2003, the district shall submit to the department an application for permit modification to incorporate proposed changes to the Everglades Construction Project and other district works delivering water to the Everglades Protection Area as needed to implement the pre-2006 projects and strategies of the Long-Term Plan in all permits issued by the department, including the permits issued pursuant to subsection (9). These changes shall be designed to achieve state water quality standards, including the phosphorus criterion and moderating provisions. During the implementation of the initial phase of the Long-Term Plan, permits issued by the department shall be based on BAPRT, and shall include technology-based effluent limitations consistent with the Long-Term Plan, as provided in subparagraph (4)(e)3.

Appendix B

SB 626, Ch. 2003-12, Laws of Florida and SB 54A, Ch. 2003-394, Laws of Florida

CHAPTER 2003-394

Committee Substitute for Senate Bill No. 54-A

An act relating to environmental and conservation lands; amending s. 253.025, F.S.; revising requirements for appraisals when acquiring state lands; amending s. 253.034, F.S.; providing conditions under which state-owned lands may be considered nonconservation lands; revising requirements for land management plans for conservation lands to be submitted to the Division of State Lands; providing that land use plans for nonconservation lands be submitted to the Division of State Lands at least every 10 years; revising requirements for the sale of surplus lands; authorizing the Division of State Lands to determine the sale price of surplus lands; providing the Board of Trustees of the Internal Improvement Trust Fund with the authority to adopt rules; directing the Division of State Lands to prepare a state inventory of all federal lands and all lands titled in the name of the state, a state agency, a water management district, or a local government; requiring the participation of counties in developing a county inventory; providing conditions under which certain lands may be made available for purchase under the state's land surplusing process; creating s. 253.0341, F.S.; authorizing counties and local governments to submit requests to surplus state lands directly to the board of trustees; providing for an expedited surplusing process; amending s. 253.042, F.S.; revising the circumstances under which the board of trustees may directly exchange state-owned lands; providing requirements for the exchange of donated conservation lands; providing requirements for the conveyance of donated nonconservation lands; providing requirements for the exchange of other state-owned lands; amending s. 253.7823, F.S.; revising requirements for the disposition of former barge canal surplus lands; amending s. 259.032, F.S.; revising requirements for updating land management plans; revising provisions allowing the use of reverted funds; requiring that state agencies prepare and submit to the Department of Revenue for certification application requests for payment in lieu of taxes from local governments; revising requirements for payment in lieu of taxes; amending s. 259.0322, F.S.; providing for the reinstitution of payments in lieu of taxes; amending s. 259.036, F.S.; requiring land management review teams to submit a 10-year land management plan update to the Acquisition and Restoration Council; amending s. 259.041, F.S.; clarifying certain requirements regarding the acquisition of state-owned lands; amending s. 373.089, F.S.; providing conditions under which lands titled in the name of a water management district may be made available for purchase through a surplusing process; amending s. 373.139, F.S.; repealing obsolete requirements; revising requirements for appraisals when acquiring water management district lands; amending s. 373.59, F.S.; revising provisions requiring payments in lieu of taxes from funds deposited into the Water Management Lands Trust Fund; amending s. 373.5905, F.S.; revising provisions requiring reinstitution of payments in lieu of taxes; amending s. 260.016, F.S.; revising powers of the department in evaluating lands for acquisition of greenways and

trails; requiring the exchange of lands between the Board of Trustees of the Internal Improvement Trust Fund and a local government under certain conditions; providing purposes for which exchanged lands may be used; requiring the exchange of lands between the Board of Trustees of the Internal Improvement Trust Fund and a private entity by July 1, 2003; repealing s. 253.84, F.S., relating to the acquisition of lands containing cattle-dipping vats; repealing s. 259.0345, F.S., relating to the Florida Forever Advisory Council; amending s. 373.4592, F.S., as amended by ch. 2003-12, Laws of Florida; amending the "Everglades Forever Act"; revising goals and mandates relating to the timing of implementing certain goals; placing time limits on certain provisions unless reauthorized by the Legislature; amending s. 373.1502, F.S.; providing for the regulation of comprehensive plan project components; revising requirements that permit applications provide assurances that state water quality standards will be met to the maximum extent practicable; reenacting s. 201.15(1),(2)(a),(11), and (12), F.S.; providing for distribution of proceeds from excise taxes on documents to pay debt service on Everglades restoration bonds; reenacting s. 215.619, F.S.; authorizing the issuance of Everglades restoration bonds to finance or refinance the cost of acquisition and improvement of land, water areas, and related property interests and resources for the purpose of implementing the Comprehensive Everglades Restoration Plan; providing procedures and limitations; providing for deposit of funds in the Save Our Everglades Trust Fund; reenacting ss. 373.470(4), (5), and (6) and 373.472(1), F.S.; authorizing the payment of debt service on Everglades restoration bonds from the Save Our Everglades Trust Fund; revising requirements for deposit of state and water management district funds into the Save Our Everglades Trust Fund; reenacting s. 6 of ch. 2002-261, Laws of Florida; providing legislative intent that the issuance of Everglades restoration bonds is in the best interest of the state; providing for construction of the act in pari materia with laws enacted during the Regular Session of the Legislature; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (6) of section 253.025, Florida Statutes, is amended to read:

253.025 Acquisition of state lands for purposes other than preservation, conservation, and recreation.—

(6) Prior to negotiations with the parcel owner to purchase land pursuant to this section, title to which will vest in the board of trustees, an appraisal of the parcel shall be required as follows:

(a) Each parcel to be acquired shall have at least one appraisal. Two appraisals are required when the estimated value of the parcel ~~first appraisal~~ exceeds $1 million ~~$500,000~~. ~~However, when the values of both appraisals exceed $500,000 and differ significantly, a third appraisal may be obtained.~~ When a parcel is estimated to be worth $100,000 or less and the

director of the Division of State Lands finds that the cost of ~~obtaining~~ an outside appraisal is not justified, a comparable sales analysis or other reasonably prudent procedures may be used by the division to estimate the value of the parcel, provided the public's interest is reasonably protected. The state is not required to appraise the value of lands and appurtenances that are being donated to the state. ~~an appraisal prepared by the division may be used.~~

Section 2. Subsections (2), (5), and (6) of section 253.034, Florida Statutes, as amended by section 14 of chapter 2003-6, Laws of Florida, are amended, subsections (8), (9), (10), and (11) are renumbered as subsections (9), (10), (11), and (12), respectively, and a new subsection (8) is added to that section, to read:

253.034 State-owned lands; uses.—

(2) As used in this section, the following phrases have the following meanings:

(a) "Multiple use" means the harmonious and coordinated management of timber, recreation, conservation of fish and wildlife, forage, archaeological and historic sites, habitat and other biological resources, or water resources so that they are utilized in the combination that will best serve the people of the state, making the most judicious use of the land for some or all of these resources and giving consideration to the relative values of the various resources. Where necessary and appropriate for all state-owned lands that are larger than 1,000 acres in project size and are managed for multiple uses, buffers may be formed around any areas that require special protection or have special management needs. Such buffers shall not exceed more than one-half of the total acreage. Multiple uses within a buffer area may be restricted to provide the necessary buffering effect desired. Multiple use in this context includes both uses of land or resources by more than one management entity, which may include private sector land managers. In any case, lands identified as multiple-use lands in the land management plan shall be managed to enhance and conserve the lands and resources for the enjoyment of the people of the state.

(b) "Single use" means management for one particular purpose to the exclusion of all other purposes, except that the using entity shall have the option of including in its management program compatible secondary purposes which will not detract from or interfere with the primary management purpose. Such single uses may include, but are not necessarily restricted to, the use of agricultural lands for production of food and livestock, the use of improved sites and grounds for institutional purposes, and the use of lands for parks, preserves, wildlife management, archaeological or historic sites, or wilderness areas where the maintenance of essentially natural conditions is important. All submerged lands shall be considered single-use lands and shall be managed primarily for the maintenance of essentially natural conditions, the propagation of fish and wildlife, and public recreation, including hunting and fishing where deemed appropriate by the managing entity.

(c) "Conservation lands" means lands that are currently managed for conservation, outdoor resource-based recreation, or archaeological or his-

toric preservation, except those lands that were acquired solely to facilitate the acquisition of other conservation lands. Lands acquired for uses other than conservation, outdoor resource-based recreation, or archaeological or historic preservation shall not be designated conservation lands except as otherwise authorized under this section. These lands shall include, but not be limited to, the following: correction and detention facilities, military installations and facilities, state office buildings, maintenance yards, state university or state community college campuses, agricultural field stations or offices, tower sites, law enforcement and license facilities, laboratories, hospitals, clinics, and other sites that possess no significant natural or historical resources. However, lands acquired solely to facilitate the acquisition of other conservation lands, and for which the land management plan has not yet been completed or updated, may be evaluated by the Board of Trustees of the Internal Improvement Trust Fund on a case-by-case basis to determine if they will be designated conservation lands.

Lands acquired by the state as a gift, through donation, or by any other conveyance for which no consideration was paid, and which are not managed for conservation, outdoor resource-based recreation, or archaeological or historic preservation under a land management plan approved by the board of trustees are not conservation lands.

(5) Each manager of conservation lands shall submit to the Division of State Lands a land management plan at least every 10 years in a form and manner prescribed by rule by the board and in accordance with the provisions of s. 259.032. Each manager of conservation lands shall also update a land management plan whenever the manager proposes to add new facilities or make substantive land use or management changes that were not addressed in the approved plan, or within 1 year of the addition of significant new lands. Each manager of nonconservation lands shall submit to the Division of State Lands a land use plan at least every 10 years in a form and manner prescribed by rule by the board. The division shall review each plan for compliance with the requirements of this subsection and the requirements of the rules established by the board pursuant to this section. All land use plans, whether for single-use or multiple-use properties, shall include an analysis of the property to determine if any significant natural or cultural resources are located on the property. Such resources include archaeological and historic sites, state and federally listed plant and animal species, and imperiled natural communities and unique natural features. If such resources occur on the property, the manager shall consult with the Division of State Lands and other appropriate agencies to develop management strategies to protect such resources. Land use plans shall also provide for the control of invasive nonnative plants and conservation of soil and water resources, including a description of how the manager plans to control and prevent soil erosion and soil or water contamination. Land use plans submitted by a manager shall include reference to appropriate statutory authority for such use or uses and shall conform to the appropriate policies and guidelines of the state land management plan. Plans for managed areas larger than 1,000 acres shall contain an analysis of the multiple-use potential of the property, which analysis shall include the potential of the property to generate revenues to enhance the management of the property. Additionally, the plan shall contain an analysis of the potential use of private land

managers to facilitate the restoration or management of these lands. In those cases where a newly acquired property has a valid conservation plan that was developed by a soil and conservation district, such plan shall be used to guide management of the property until a formal land use plan is completed. ~~Each entity managing conservation lands shall submit to the Division of State Lands a land management plan at least every 5 years in a form and manner prescribed by rule by the board. All management plans, whether for single-use or multiple-use properties, shall specifically describe how the managing entity plans to identify, locate, protect and preserve, or otherwise use fragile nonrenewable resources, such as archaeological and historic sites, as well as other fragile resources, including endangered plant and animal species, and provide for the conservation of soil and water resources and for the control and prevention of soil erosion. Land management plans submitted by an entity shall include reference to appropriate statutory authority for such use or uses and shall conform to the appropriate policies and guidelines of the state land management plan. All land management plans for parcels larger than 1,000 acres shall contain an analysis of the multiple-use potential of the parcel, which analysis shall include the potential of the parcel to generate revenues to enhance the management of the parcel. Additionally, the land management plan shall contain an analysis of the potential use of private land managers to facilitate the restoration or management of these lands. In those cases where a newly acquired property has a valid conservation plan, the plan shall be used to guide management of the property until a formal land management plan is completed.~~

(a) The Division of State Lands shall make available to the public a copy of each land management plan for parcels that exceed 160 acres in size. The council shall review each plan for compliance with the requirements of this subsection, the requirements of chapter 259, and the requirements of the rules established by the board pursuant to this section. The council shall also consider the propriety of the recommendations of the managing entity with regard to the future use of the property, the protection of fragile or nonrenewable resources, the potential for alternative or multiple uses not recognized by the managing entity, and the possibility of disposal of the property by the board. After its review, the council shall submit the plan, along with its recommendations and comments, to the board. The council shall specifically recommend to the board whether to approve the plan as submitted, approve the plan with modifications, or reject the plan.

(b) The Board of Trustees of the Internal Improvement Trust Fund shall consider the land management plan submitted by each entity and the recommendations of the council and the Division of State Lands and shall approve the plan with or without modification or reject such plan. The use or possession of any such lands that is not in accordance with an approved land management plan is subject to termination by the board.

(6) The Board of Trustees of the Internal Improvement Trust Fund shall determine which lands, the title to which is vested in the board, may be surplused. For conservation lands, the board shall make a determination that the lands are no longer needed for conservation purposes and may dispose of them by an affirmative vote of at least three members. In the case of a land exchange involving the disposition of conservation lands, the board

must determine by an affirmative vote of at least three members that the exchange will result in a net positive conservation benefit. For all other lands, the board shall make a determination that the lands are no longer needed and may dispose of them by an affirmative vote of at least three members.

(a) For the purposes of this subsection, all lands acquired by the state prior to July 1, 1999, using proceeds from the Preservation 2000 bonds, the Conservation and Recreation Lands Trust Fund, the Water Management Lands Trust Fund, Environmentally Endangered Lands Program, and the Save Our Coast Program and titled to the board, which lands are identified as core parcels or within original project boundaries, shall be deemed to have been acquired for conservation purposes.

(b) For any lands purchased by the state on or after July 1, 1999, a determination shall be made by the board prior to acquisition as to those parcels that shall be designated as having been acquired for conservation purposes. No lands acquired for use by the Department of Corrections, the Department of Management Services for use as state offices, the Department of Transportation, except those specifically managed for conservation or recreation purposes, or the State University System or the Florida Community College System shall be designated as having been purchased for conservation purposes.

(c) At least every 10 ~~5~~ years, as a component of each land management plan or land use plan and in a form and manner prescribed by rule by the board, each manager ~~management entity~~ shall evaluate and indicate to the board those lands that ~~the entity manages which~~ are not being used for the purpose for which they were originally leased. For conservation lands, the council shall review and shall recommend to the board whether such lands should be retained in public ownership or disposed of by the board. For nonconservation lands, the division shall review such lands and shall recommend to the board whether such lands should be retained in public ownership or disposed of by the board. ~~Such lands shall be reviewed by the council for its recommendation as to whether such lands should be disposed of by the board.~~

(d) Lands owned by the board which are not actively managed by any state agency or for which a land management plan has not been completed pursuant to subsection (5) shall be reviewed by the council or its successor for its recommendation as to whether such lands should be disposed of by the board.

(e) Prior to any decision by the board to surplus lands, the Acquisition and Restoration Council shall review and make recommendations to the board concerning the request for surplusing. The council shall determine whether the request for surplusing is compatible with the resource values of and management objectives for such lands.

(f) In reviewing lands owned by the board, the council shall consider whether such lands would be more appropriately owned or managed by the county or other unit of local government in which the land is located. The

council shall recommend to the board whether a sale, lease, or other conveyance to a local government would be in the best interests of the state and local government. The provisions of this paragraph in no way limit the provisions of ss. 253.111 and 253.115. Such lands shall be offered to the state, county, or local government for a period of 30 days. Permittable uses for such surplus lands may include public schools; public libraries; fire or law enforcement substations; and governmental, judicial, or recreational centers. County or local government requests for surplus lands shall be expedited throughout the surplusing process. If the county or local government does not elect to purchase such lands in accordance with s. 253.111, then any surplusing determination involving other governmental agencies shall be made upon the board deciding the best public use of the lands. Surplus properties in which governmental agencies have expressed no interest shall then be available for sale on the private market.

(g) The sale price of lands determined to be surplus pursuant to this subsection shall be determined by the division and shall take into consideration an appraisal of the property, or, when the estimated value of the land is less than $100,000, a comparable sales analysis or a broker's opinion of value, and ~~sold for appraised value or~~ the price paid by the state ~~or a water management district~~ to originally acquire the lands., ~~whichever is greater, except when the board or its designee determines a different sale price is in the public interest. However, for those lands sold as surplus to any unit of government, the price shall not exceed the price paid by the state or a water management district to originally acquire the lands.~~ A unit of government that ~~which~~ acquires title to lands hereunder for less than appraised value may not sell or transfer title to all or any portion of the lands to any private owner for a period of 10 years. Any unit of government seeking to transfer or sell lands pursuant to this paragraph shall first allow the board of trustees to reacquire such lands for the price at which the board ~~they~~ sold such lands.

(h) Where a unit of government acquired land by gift, donation, grant, quit-claim deed, or other such conveyance where no monetary consideration was exchanged, the price of land sold as surplus may be based on one appraisal. In the event that a single appraisal yields a value equal to or greater than $1 million, a second appraisal is required. The individual or entity requesting the surplus shall select and use appraisers from the list of approved appraisers maintained by the Division of State Lands in accordance with s. 253.025(6)(b). The individual or entity requesting the surplus is to incur all costs of the appraisals.

(i) After reviewing the recommendations of the council, the board shall determine whether lands identified for surplus are to be held for other public purposes or whether such lands are no longer needed. The board may require an agency to release its interest in such lands. For an agency that has requested the use of a property that was to be declared as surplus, said agency must have the property under lease within 6 months of the date of expiration of the notice provisions required under ss. 253.034(6) and 253.111.

(j) Requests for surplusing may be made by any public or private entity or person. All requests shall be submitted to the lead managing agency for

review and recommendation to the council or its successor. Lead managing agencies shall have 90 days to review such requests and make recommendations. Any surplusing requests that have not been acted upon within the 90-day time period shall be immediately scheduled for hearing at the next regularly scheduled meeting of the council or its successor. Requests for surplusing pursuant to this paragraph shall not be required to be offered to local or state governments as provided in paragraph (f).

(k) Proceeds from any sale of surplus lands pursuant to this subsection shall be deposited into the fund from which such lands were acquired. However, if the fund from which the lands were originally acquired no longer exists, such proceeds shall be deposited into an appropriate account to be used for land management by the lead managing agency assigned the lands prior to the lands being declared surplus. Funds received from the sale of surplus nonconservation lands, or lands that were acquired by gift, by donation, or for no consideration, shall be deposited into the Internal Improvement Trust Fund.

(l) Notwithstanding the provisions of this subsection, no such disposition of land shall be made if such disposition would have the effect of causing all or any portion of the interest on any revenue bonds issued to lose the exclusion from gross income for federal income tax purposes.

(m) The sale of filled, formerly submerged land that does not exceed 5 acres in area is not subject to review by the council or its successor.

(n) The board may adopt rules to implement the provisions of this section, which may include procedures for administering surplus land requests and criteria for when the division may approve requests to surplus nonconservation lands on behalf of the board.

(8)(a) Notwithstanding other provisions of this section, the Division of State Lands is directed to prepare a state inventory of all federal lands and all lands titled in the name of the state, a state agency, a water management district, or a local government on a county-by-county basis. To facilitate the development of the state inventory, each county shall direct the appropriate county office with authority over the information to provide the division with a county inventory of all lands identified as federal lands and lands titled in the name of the state, a state agency, a water management district, or a local government.

(b) The state inventory must distinguish between lands purchased by the state or a water management district as part of a core parcel or within original project boundaries, as those terms are used to meet the surplus requirements of subsection (6), and lands purchased by the state, a state agency, or a water management district which are not essential or necessary for conservation purposes.

(c) In any county having a population of 75,000 or fewer, or a county having a population of 100,000 or fewer that is contiguous to a county having a population of 75,000 or fewer, in which more than 50 percent of the lands within the county boundary are federal lands and lands titled in the name

of the state, a state agency, a water management district, or a local government, those lands titled in the name of the state or a state agency which are not essential or necessary to meet conservation purposes may, upon request of a public or private entity, be made available for purchase through the state's surplusing process. Rights-of-way for existing, proposed, or anticipated transportation facilities are exempt from the requirements of this paragraph. Priority consideration shall be given to buyers, public or private, willing to return the property to productive use so long as the property can be reentered onto the county ad valorem tax roll. Property acquired with matching funds from a local government shall not be made available for purchase without the consent of the local government.

Section 3. Section 253.0341, Florida Statutes, is created to read:

253.0341 Surplus of state-owned lands to counties or local governments.—Counties and local governments may submit surplusing requests for state-owned lands directly to the board of trustees. County or local government requests for the state to surplus conservation or nonconservation lands, whether for purchase or exchange, shall be expedited throughout the surplusing process. Property jointly acquired by the state and other entities shall not be surplused without the consent of all joint owners.

(1) The decision to surplus state-owned nonconservation lands may be made by the board without a review of, or a recommendation on, the request from the Acquisition and Restoration Council or the Division of State Lands. Such requests for nonconservation lands shall be considered by the board within 60 days of the board's receipt of the request.

(2) County or local government requests for the surplusing of state-owned conservation lands are subject to review of and recommendation on the request to the board by the Acquisition and Restoration Council. Requests to surplus conservation lands shall be considered by the board within 120 days of the board's receipt of the request.

Section 4. Section 253.42, Florida Statutes, is amended to read:

(Substantial rewording of section. See
s. 253.42, F.S., for present text.)

253.42 Board of trustees may exchange lands.—The provisions of this section apply to all lands owned by, vested in, or titled in the name of the board whether the lands were acquired by the state as a purchase, or through gift, donation, or any other conveyance for which no consideration was paid.

(1) The board of trustees may exchange any lands owned by, vested in, or titled in the name of the board for other lands in the state owned by counties, local governments, individuals, or private or public corporations, and may fix the terms and conditions of any such exchange. Any nonconservation lands that were acquired by the state through gift, donation, or any other conveyance for which no consideration was paid must first be offered at no cost to a county or local government unless otherwise provided in a deed restriction of record or other legal impediment, and so long as the use

proposed by the county or local government is for a public purpose. For conservation lands acquired by the state through gift, donation, or any other conveyance for which no consideration was paid, the state may request land of equal conservation value from the county or local government but no other consideration.

(2) In exchanging state-owned lands not acquired by the state through gift, donation, or any other conveyance for which no consideration was paid, with counties or local governments, the board shall require an exchange of equal value. Equal value is defined as the conservation benefit of the lands being offered for exchange by a county or local government being equal or greater in conservation benefit than the state-owned lands. Such exchanges may include cash transactions if based on an appropriate measure of value of the state-owned land, but must also include the determination of a net-positive conservation benefit by the Acquisition and Restoration Council, irrespective of appraised value.

(3) The board shall select and agree upon the state lands to be exchanged and the lands to be conveyed to the state and shall pay or receive any sum of money deemed necessary by the board for the purpose of equalizing the value of the exchanged property. The board is authorized to make and enter into contracts or agreements for such purpose or purposes.

Section 5. Section 253.7823, Florida Statutes, is amended to read:

253.7823 Disposition of surplus lands; compensation of counties located within the Cross Florida Canal Navigation District.—

(1) The department may ~~shall~~ identify parcels of former barge canal lands that ~~which~~ may be sold or exchanged ~~as needed to repay the counties of the Cross Florida Canal Navigation District any sums due them pursuant to s. 253.783(2)(c)~~. In identifying said surplus lands, the department shall give priority to ~~consideration to lands situated outside the greenways' boundaries,~~ those lands not having high recreation or conservation values, and those having the greatest assessed valuations. Although the department shall immediately begin to identify the parcels of surplus lands to be sold, the department shall offer the lands for sale in a manner designed to maximize the amounts received over a reasonable period of time.

~~(2) Disbursements of amounts due the counties shall be made on a semi-annual basis and shall be completed before any additional lands or easements may be acquired within the boundaries of the greenways.~~

(2)~~(3) In addition to lands identified for sale to generate funds for repayment of counties pursuant to s. 253.783(2)(c),~~ The department is authorized to sell surplus additional former canal lands if they are determined to be unnecessary to the effective provision of the type of recreational opportunities and conservation activities for which the greenway was ~~greenways were~~ created.

~~(4) Until repayment to the counties pursuant to s. 253.783(2)(c) has been completed, any agency wishing to use former canal lands must pay the full assessed value of said lands.~~

Section 6. Paragraph (c) of subsection (10) and subsections (12), (13), and (16) of section 259.032, Florida Statutes, are amended to read:

259.032 Conservation and Recreation Lands Trust Fund; purpose.—

(10)

(c) Once a plan is adopted, the managing agency or entity shall update the plan at least every 10 ~~5~~ years in a form and manner prescribed by rule of the board of trustees. Such updates, for parcels over 160 acres, shall be developed with input from an advisory group. Such plans may include transfers of leasehold interests to appropriate conservation organizations or governmental entities designated by the Land Acquisition and Management Advisory Council or its successor, for uses consistent with the purposes of the organizations and the protection, preservation, conservation, restoration, and proper management of the lands and their resources. Volunteer management assistance is encouraged, including, but not limited to, assistance by youths participating in programs sponsored by state or local agencies, by volunteers sponsored by environmental or civic organizations, and by individuals participating in programs for committed delinquents and adults.

(12)(a) Beginning July 1, 1999, the Legislature shall make available sufficient funds annually from the Conservation and Recreation Lands Trust Fund to the department for payment in lieu of taxes to qualifying counties and local governments as defined in paragraph (b) for all actual tax losses incurred as a result of board of trustees acquisitions for state agencies under the Florida Forever program or the Florida Preservation 2000 program during any year. Reserved funds not used for payments in lieu of taxes in any year shall revert to the fund to be used for land management ~~acquisition~~ in accordance with the provisions of this section.

(b) Payment in lieu of taxes shall be available:

1. To all counties that have a population of 150,000 or fewer. Population levels shall be determined pursuant to s. 11.031.

2. To all local governments located in eligible counties.

3. To Glades County, where a privately owned and operated prison leased to the state has recently been opened and where privately owned and operated juvenile justice facilities leased to the state have recently been constructed and opened, a payment in lieu of taxes, in an amount that offsets the loss of property tax revenue, which funds have already been appropriated and allocated from the Department of Correction's budget for the purpose of reimbursing amounts equal to lost ad valorem taxes.

~~Counties and local governments that did not receive payments in lieu of taxes for lands purchased pursuant to s. 259.101 during fiscal year 1999-2000, if such counties and local governments would have received payments pursuant to this subsection as that section existed on June 30, 1999, shall receive retroactive payments for such tax losses.~~

(c) If insufficient funds are available in any year to make full payments to all qualifying counties and local governments, such counties and local governments shall receive a pro rata share of the moneys available.

(d) The payment amount shall be based on the average amount of actual taxes paid on the property for the 3 years preceding acquisition. Applications for payment in lieu of taxes shall be made no later than January 31 of the year following acquisition. No payment in lieu of taxes shall be made for properties which were exempt from ad valorem taxation for the year immediately preceding acquisition.

(e) If property which was subject to ad valorem taxation was acquired by a tax-exempt entity for ultimate conveyance to the state under this chapter, payment in lieu of taxes shall be made for such property based upon the average amount of taxes paid on the property for the 3 years prior to its being removed from the tax rolls. The department shall certify to the Department of Revenue those properties that may be eligible under this provision. Once eligibility has been established, that county or local government shall receive 10 consecutive annual payments for each tax loss, and no further eligibility determination shall be made during that period.

(f)~~(e)~~ Payment in lieu of taxes pursuant to this subsection shall be made annually to qualifying counties and local governments after certification by the Department of Revenue that the amounts applied for are reasonably appropriate, based on the amount of actual taxes paid on the eligible property. With the assistance of the local government requesting payment in lieu of taxes, the state agency that acquired the land is responsible for preparing and submitting application requests for payment to the Department of Revenue for certification~~, and after the Department of Environmental Protection has provided supporting documents to the Comptroller and has requested that payment be made in accordance with the requirements of this section~~.

(g)~~(f)~~ If the board of trustees conveys to a local government title to any land owned by the board, any payments in lieu of taxes on the land made to the local government shall be discontinued as of the date of the conveyance.

For the purposes of this subsection, "local government" includes municipalities, the county school board, mosquito control districts, and any other local government entity which levies ad valorem taxes, with the exception of a water management district.

(13) Moneys credited to the fund each year which are not used for management, maintenance, or capital improvements pursuant to subsection (11); for payment in lieu of taxes pursuant to subsection (12); or for the purposes of subsection (5), shall be available for the acquisition of land pursuant to this section.

~~(16) Notwithstanding other provisions of law relating to the purpose of the Conservation and Recreation Lands Trust Fund, and for the 2002-2003 fiscal year only, the purposes of the trust fund shall include funding issues provided in the General Appropriations Act. This subsection expires July 1, 2003.~~

Section 7. Section 259.0322, Florida Statutes, is amended to read:

259.0322 Reinstitution of payments in lieu of taxes; duration.—If the Department of Environmental Protection ~~or a water management district~~ has made a payment in lieu of taxes to a governmental entity and subsequently suspended such payment, the department ~~or water management district~~ shall reinstitute appropriate payments and continue the payments in consecutive years until the governmental entity has received a total of 10 payments for each tax loss.

Section 8. Subsection (2) of section 259.036, Florida Statutes, is amended to read:

259.036 Management review teams.—

(2) The land management review team shall review select management areas ~~parcels of managed land~~ prior to the date the manager ~~managing agency~~ is required to submit a 10-year ~~its 5-year~~ land management plan update. For management areas that exceed 1,000 acres in size, the Division of State Lands shall schedule a land management review at least every 5 years. A copy of the review shall be provided to the manager ~~managing agency~~, the Division of State Lands, and the Acquisition and Restoration Council ~~Land Acquisition and Management Advisory Council or its successor~~. The manager ~~managing agency~~ shall consider the findings and recommendations of the land management review team in finalizing the required 10-year ~~5-year~~ update of its management plan.

Section 9. Subsection (1) of section 259.041, Florida Statutes, as amended by chapter 2003-6, Laws of Florida, is amended to read:

259.041 Acquisition of state-owned lands for preservation, conservation, and recreation purposes.—

(1) Neither the Board of Trustees of the Internal Improvement Trust Fund nor its duly authorized agent shall commit the state, through any instrument of negotiated contract or agreement for purchase, to the purchase of lands with or without appurtenances unless the provisions of this section have been fully complied with. Except for the requirements of subsections (3), (14), and (15), the board of trustees may waive any requirements of this section, may waive any rules adopted pursuant to this section, notwithstanding chapter 120. ~~However, the board of trustees may waive any requirement of this section, except the requirements of subsections (3), (14), and (15); or, notwithstanding chapter 120, may waive any rules adopted pursuant to this section, except rules adopted pursuant to subsections (3),(14), and (15);~~ or may substitute other reasonably prudent procedures, provided the public's interest is reasonably protected. The title to lands acquired pursuant to this section shall vest in the board of trustees as provided in s. 253.03(1), unless otherwise provided by law, and ~~,~~ all such titled lands ~~, title to which is vested in the board of trustees pursuant to this section,~~ shall be administered pursuant to the provisions of s. 253.03.

Section 10. Present subsection (5) of section 373.089, Florida Statutes, is renumbered as subsection (6), and a new subsection (5) is added to that section, to read:

373.089 Sale or exchange of lands, or interests or rights in lands.—The governing board of the district may sell lands, or interests or rights in lands, to which the district has acquired title or to which it may hereafter acquire title in the following manner:

(5) In any county having a population of 75,000 or fewer, or a county having a population of 100,000 or fewer that is contiguous to a county having a population of 75,000 or fewer, in which more than 50 percent of the lands within the county boundary are federal lands and lands titled in the name of the state, a state agency, a water management district, or a local government, those lands titled in the name of a water management district which are not essential or necessary to meet conservation purposes may, upon request of a public or private entity, be made available for purchase through the surplusing process in this section. Priority consideration must be given to buyers, public or private, who are willing to return the property to productive use so long as the property can be reentered onto the county ad valorem tax roll. Property acquired with matching funds from a local government shall not be made available for purchase without the consent of the local government.

Section 11. Subsection (3) of section 373.139, Florida Statutes, is amended to read:

373.139 Acquisition of real property.—

(3) The initial 5-year work plan and any subsequent modifications or additions thereto shall be adopted by each water management district after a public hearing. Each water management district shall provide at least 14 days' advance notice of the hearing date and shall separately notify each county commission within which a proposed work plan project or project modification or addition is located of the hearing date.

(a) Appraisal reports, offers, and counteroffers are confidential and exempt from the provisions of s. 119.07(1) until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the governing board. However, each district may, at its discretion, disclose appraisal reports to private landowners during negotiations for acquisitions using alternatives to fee simple techniques, if the district determines that disclosure of such reports will bring the proposed acquisition to closure. In the event that negotiation is terminated by the district, the ~~title information,~~ appraisal report, offers, and counteroffers shall become available pursuant to s. 119.07(1). Notwithstanding the provisions of this section and s. 259.041, a district and the Division of State Lands may share and disclose ~~title information,~~ appraisal reports, appraisal information, offers, and counteroffers when joint acquisition of property is contemplated. A district and the Division of State Lands shall maintain the confidentiality of such ~~title information,~~ appraisal reports, appraisal information, offers, and counteroffers in conformance with this section and s. 259.041, except in those cases in which a district and the division have exercised discretion to disclose such information. A district may disclose appraisal information, offers, and counteroffers to a third party who has entered into a contractual agreement with the

district to work with or on the behalf of or to assist the district in connection with land acquisitions. The third party shall maintain the confidentiality of such information in conformance with this section. In addition, a district may use, as its own, appraisals obtained by a third party provided the appraiser is selected from the district's list of approved appraisers and the appraisal is reviewed and approved by the district.

(b) The Secretary of Environmental Protection shall release moneys from the appropriate account or trust fund to a district for preacquisition costs within 30 days after receipt of a resolution adopted by the district's governing board which identifies and justifies any such preacquisition costs necessary for the purchase of any lands listed in the district's 5-year work plan. The district shall return to the department any funds not used for the purposes stated in the resolution, and the department shall deposit the unused funds into the appropriate account or trust fund.

(c) The Secretary of Environmental Protection shall release acquisition moneys from the appropriate account or trust fund to a district following receipt of a resolution adopted by the governing board identifying the lands being acquired and certifying that such acquisition is consistent with the 5-year work plan of acquisition and other provisions of this section. The governing board also shall provide to the Secretary of Environmental Protection a copy of all certified appraisals used to determine the value of the land to be purchased. Each parcel to be acquired must have at least one appraisal. Two appraisals are required when the estimated value of the parcel exceeds $1 million ~~$500,000~~. However, when both appraisals exceed $1 million ~~$500,000~~ and differ significantly, a third appraisal may be obtained. If the purchase price is greater than the appraisal price, the governing board shall submit written justification for the increased price. The Secretary of Environmental Protection may withhold moneys for any purchase that is not consistent with the 5-year plan or the intent of this section or that is in excess of appraised value. The governing board may appeal any denial to the Land and Water Adjudicatory Commission pursuant to s. 373.114.

Section 12. Subsection (10) of section 373.59, Florida Statutes, as amended by chapter 2003-2, Laws of Florida, is amended to read:

373.59 Water Management Lands Trust Fund.—

(10)(a) Beginning July 1, 1999, not more than one-fourth of the ~~land management~~ funds provided for in subsections (1) and (8) in any year shall be reserved annually by a governing board, during the development of its annual operating budget, for payments in lieu of taxes for all actual tax losses incurred as a result of governing board acquisitions for water management districts pursuant to ss. 259.101, 259.105, 373.470, and this section during any year. Reserved funds not used for payments in lieu of taxes in any year shall revert to the Water Management Lands Trust Fund to be used in accordance with the provisions of this section.

(b) Payment in lieu of taxes shall be available:

1. To all counties that have a population of 150,000 or fewer. Population levels shall be determined pursuant to s. 11.031.

2. To all local governments located in eligible counties and whose lands are bought and taken off the tax rolls.

For properties acquired after January 1, 2000, in the event that such properties otherwise eligible for payment in lieu of taxes under this subsection are leased or reserved and remain subject to ad valorem taxes, payments in lieu of taxes shall commence or recommence upon the expiration or termination of the lease or reservation, but in no event shall there be more than a total of 10 ~~ten~~ annual payments in lieu of taxes for each tax loss. If the lease is terminated for only a portion of the lands at any time, the 10 ~~ten~~ annual payments shall be made for that portion only commencing the year after such termination, without limiting the requirement that 10 ~~ten~~ annual payments shall be made on the remaining portion or portions of the land as the lease on each expires. For the purposes of this subsection, "local government" includes municipalities, the county school board, mosquito control districts, and any other local government entity which levies ad valorem taxes.

(c) If sufficient funds are unavailable in any year to make full payments to all qualifying counties and local governments, such counties and local governments shall receive a pro rata share of the moneys available.

(d) The payment amount shall be based on the average amount of actual taxes paid on the property for the 3 years preceding acquisition. Applications for payment in lieu of taxes shall be made no later than January 31 of the year following acquisition. No payment in lieu of taxes shall be made for properties which were exempt from ad valorem taxation for the year immediately preceding acquisition.

(e) If property that was subject to ad valorem taxation was acquired by a tax-exempt entity for ultimate conveyance to the state under this chapter, payment in lieu of taxes shall be made for such property based upon the average amount of taxes paid on the property for the 3 years prior to its being removed from the tax rolls. The water management districts shall certify to the Department of Revenue those properties that may be eligible under this provision. Once eligibility has been established, that governmental entity shall receive 10 consecutive annual payments for each tax loss, and no further eligibility determination shall be made during that period.

(f)~~(e)~~ Payment in lieu of taxes pursuant to this subsection shall be made annually to qualifying counties and local governments after certification by the Department of Revenue that the amounts applied for are reasonably appropriate, based on the amount of actual taxes paid on the eligible property, and after the water management districts have provided supporting documents to the Comptroller and have requested that payment be made in accordance with the requirements of this section. With the assistance of the local government requesting payment in lieu of taxes, the water management district that acquired the land is responsible for preparing and submitting application requests for payment to the Department of Revenue for certification.

(g)~~(f)~~ If a water management district conveys to a county or local government title to any land owned by the district, any payments in lieu of taxes

on the land made to the county or local government shall be discontinued as of the date of the conveyance.

~~(g) The districts may make retroactive payments to counties and local governments that did not receive payments in lieu of taxes for lands purchased under s. 259.101 and this section during fiscal year 1999-2000 if the counties and local governments would have received those payments under ss. 259.032(12) and 373.59(14).~~

Section 13. Section 373.5905, Florida Statutes, is amended to read:

373.5905 Reinstitution of payments in lieu of taxes; duration.—If ~~the Department of Environmental Protection or~~ a water management district has made a payment in lieu of taxes to a governmental entity and subsequently suspended such payment, the ~~department or~~ water management district shall reinstitute appropriate payments and continue the payments in consecutive years until the governmental entity has received a total of 10 payments for each tax loss.

Section 14. Subsection (2) of section 260.016, Florida Statutes, is amended to read:

260.016 General powers of the department.—

(2) The department shall:

(a) Evaluate lands for the acquisition of greenways and trails and compile a list of suitable corridors, greenways, and trails, ranking them in order of priority for proposed acquisition. The department shall devise a method of evaluation which includes, but is not limited to, the consideration of:

~~1.~~ the importance and function of such corridors within the statewide system.

~~2. Potential for local sharing in the acquisition, development, operation, or maintenance of greenway and trail corridors.~~

~~3. Costs of acquisition, development, operation, and maintenance.~~

(b) Maintain an updated list of abandoned and to-be-abandoned railroad rights-of-way.

(c) Provide information to public and private agencies and organizations on abandoned rail corridors which are or will be available for acquisition from the railroads or for lease for interim recreational use from the Department of Transportation.

(d) Develop and implement a process for designation of lands and waterways as a part of the statewide system of greenways and trails, which shall include:

1. Development and dissemination of criteria for designation.

2. Development and dissemination of criteria for changes in the terms or conditions of designation, including withdrawal or termination of designa-

tion. A landowner may have his or her lands removed from designation by providing the department with a written request that contains an adequate description of such lands to be removed. Provisions shall be made in the designation agreement for disposition of any future improvements made to the land by the department.

~~3. Compilation of available information on and field verification of the characteristics of the lands and waterways as they relate to the developed criteria.~~

3.~~4.~~ Public notice pursuant to s. 120.525 in all phases of the process.

~~5. Actual notice to the landowner by certified mail at least 7 days before any public meeting regarding the department's intent to designate.~~

4.~~6.~~ Written authorization from the landowner in the form of a lease or other instrument for the designation and granting of public access, if appropriate, to a landowner's property.

5.~~7. Development of~~ A greenway or trail use plan as a part of the designation agreement which shall~~. In any particular segment of a greenway or trail, the plan components must be compatible with connecting segments and~~, at a minimum, describe the types and intensities of uses of the property.

(e) Implement the plan for the Florida Greenways and Trails System as adopted by the Florida Greenways Coordinating Council on September 11, 1998.

Section 15. In an exchange of lands contemplated between the Board of Trustees of the Internal Improvement Trust Fund and a local government for donated state lands no longer needed for conservation purposes, lands proposed for exchange by the state and the local government shall be considered of equal value and no further consideration shall be required, provided that the donated land being offered for exchange by the state is not greater than 200 acres, and provided that the local government has been negotiating the exchange of lands with the Division of State Lands of the Department of Environmental Protection for a period of not less than 1 year. Notwithstanding the exchange and surplusing requirements of chapters 253 and 259, Florida Statutes, and the notice requirements of chapter 270, Florida Statutes, the board of trustees shall exchange lands with a local government under these provisions no later than August 31, 2003. Lands conveyed to a local government under these provisions must be used for a public purpose. Deeds of conveyance conveyed to a local government under these provisions shall contain a reverter clause that automatically reverts title to the board of trustees if the local government fails to use the property for a public purpose.

Section 16. Effective upon becoming law and notwithstanding the exchange and surplusing requirements of chapters 253 and 259, Florida Statutes, and the notice requirements of chapter 270, Florida Statutes, in an exchange of lands contemplated between the Board of Trustees of the Internal Improvement Trust Fund and a private entity for formerly submerged

sovereignty lands, heretofore known as the "Chapman Exchange," the board shall exchange lands with the private entity under these provisions no later than July 1, 2003. This exchange satisfies the constitutional public interest test for the following reasons:

1. The land to be exchanged by the state is not greater than 200 acres, is within a rural county of critical economic concern, and is adjacent to lands previously sold by the state to private interests.

2. The land to be exchanged is currently off the tax rolls of the county, which is at the 10 mill constitutional cap.

3. The private entity has been negotiating an exchange with the Division of State Lands for a period of not less than one year, has acquired lands within the division's project areas for conservation land acquisition, and owns land adjacent to the subject state parcel.

4. The exchange shall be of equal monetary value. The private entity shall provide any difference in appraised value at the time of closing in cash or the equivalent.

Section 17. Sections 253.84 and 259.0345, Florida Statutes, are repealed.

Section 18. Paragraph (a) of subsection (2), paragraph (e) of subsection (4), and subsections (3) and (10) of section 373.4592, Florida Statutes, as amended by section 1 of chapter 2003-12, Laws of Florida, are amended to read:

373.4592 Everglades improvement and management.—

(2) DEFINITIONS.—As used in this section:

(a) "Best available phosphorus reduction technology" or "BAPRT" means a combination of BMPs and STAs which includes a continuing research and monitoring program to reduce outflow concentrations of phosphorus so as to achieve the phosphorus criterion in the Everglades Protection Area ~~at the earliest practicable date~~.

(3) EVERGLADES LONG-TERM PLAN.—

(a) The Legislature finds that the Everglades Program required by this section establishes more extensive and comprehensive requirements for surface water improvement and management within the Everglades than the SWIM plan requirements provided in ss. 373.451-373.456. In order to avoid duplicative requirements, and in order to conserve the resources available to the district, the SWIM plan requirements of those sections shall not apply to the Everglades Protection Area and the EAA during the term of the Everglades Program, and the district will neither propose, nor take final agency action on, any Everglades SWIM plan for those areas until the Everglades Program is fully implemented. Funds under s. 259.101(3)(b) may be used for acquisition of lands necessary to implement the Everglades Construction Project, to the extent these funds are identified in the Statement of Principles of July 1993. The district's actions in implementing the

Everglades Construction Project relating to the responsibilities of the EAA and C-139 Basin for funding and water quality compliance in the EAA and the Everglades Protection Area shall be governed by this section. Other strategies or activities in the March 1992 Everglades SWIM plan may be implemented if otherwise authorized by law.

(b) The Legislature finds that the most reliable means of optimizing the performance of STAs and achieving reasonable further progress in reducing phosphorus entering the Everglades Protection Area is to utilize a long-term planning process. The Legislature finds that the Long-Term Plan provides the best available phosphorus reduction technology based upon a combination of the BMPs and STAs described in the Plan provided that the Plan shall seek to achieve the phosphorus criterion in the Everglades Protection Area. The pre-2006 projects identified in the Long-Term Plan shall be implemented by the district without delay, and revised with the ~~Long-Term Plan will be implemented and revised with the~~ planning goal and objective of achieving the phosphorus criterion to be adopted pursuant to subparagraph (4)(e)2. in the Everglades Protection Area, and not based on any planning goal or objective in the Plan that is inconsistent with this section. Revisions to the Long-Term Plan shall be incorporated through an adaptive management approach including a process development and engineering component to identify and implement incremental optimization measures for further phosphorus reductions. Revisions to the Long-Term Plan shall be approved by the department. In addition, the department may propose changes to the Long-Term Plan as science and environmental conditions warrant.

(c) It is the intent of the Legislature that implementation of the Long-Term Plan shall be integrated and consistent with the implementation of the projects and activities in the Congressionally authorized components of the CERP so that unnecessary and duplicative costs will be avoided. Nothing in this section shall modify any existing cost share or responsibility provided for projects listed in s. 528 of the Water Resources Development Act of 1996 (110 Stat. 3769) or provided for projects listed in section 601 of the Water Resources Development Act of 2000 (114 Stat. 2572). The Legislature does not intend for the provisions of this section to diminish commitments made by the State of Florida to restore and maintain water quality in the Everglades Protection Area, including the federal lands in the settlement agreement referenced in paragraph (4)(e).

(d) The Legislature recognizes that the Long-Term Plan contains an initial phase and a 10-year second phase. The Legislature intends that a review of this act at least 10 years after implementation of the initial phase is appropriate and necessary to the public interest. The review is the best way to ensure that the Everglades Protection Area is achieving state water quality standards, including phosphorus reduction, and the Long-Term Plan is ~~discharges to the Everglades Protection Area are achieving state water quality standards, including phosphorus reduction, to the maximum extent practicable, and are~~ using the best technology available. A 10-year second phase of the Long-Term Plan must be approved by the Legislature and codified in this act prior to implementation of projects, but not prior to development, review, and approval of projects by the department.

(e) The Long-Term Plan shall be implemented for an initial 13-year phase (2003-2016) and shall~~, to the maximum extent practicable,~~ achieve water quality standards relating to the phosphorus criterion in the Everglades Protection Area as determined by a network of monitoring stations established for this purpose. Not later than December 31, 2008, and each 5 years thereafter, the department shall review and approve incremental phosphorus reduction measures ~~to be implemented at the earliest practicable date~~.

(4) EVERGLADES PROGRAM.—

(e) Evaluation of water quality standards.—

1. The department and the district shall employ all means practicable to complete by December 31, 1998, any additional research necessary to:

a. Numerically interpret for phosphorus the Class III narrative nutrient criterion necessary to meet water quality standards in the Everglades Protection Area; and

b. Evaluate existing water quality standards applicable to the Everglades Protection Area and EAA canals.

2. In no case shall such phosphorus criterion allow waters in the Everglades Protection Area to be altered so as to cause an imbalance in the natural populations of aquatic flora or fauna. The phosphorus criterion shall be 10 parts per billion (ppb) in the Everglades Protection Area in the event the department does not adopt by rule such criterion by December 31, 2003. However, in the event the department fails to adopt a phosphorus criterion on or before December 31, 2002, any person whose substantial interests would be affected by the rulemaking shall have the right, on or before February 28, 2003, to petition for a writ of mandamus to compel the department to adopt by rule such criterion. Venue for the mandamus action must be Leon County. The court may stay implementation of the 10 parts per billion (ppb) criterion during the pendency of the mandamus proceeding upon a demonstration by the petitioner of irreparable harm in the absence of such relief. The department's phosphorus criterion, whenever adopted, shall supersede the 10 parts per billion (ppb) criterion otherwise established by this section, but shall not be lower than the natural conditions of the Everglades Protection Area and shall take into account spatial and temporal variability. The department's rule adopting a phosphorus criterion may include moderating provisions during the implementation of the initial phase of the Long-Term Plan authorizing discharges based upon BAPRT providing net improvement to impacted areas. Discharges to unimpacted areas may also be authorized by moderating provisions, which shall require BAPRT, and which must be based upon a determination by the department that the environmental benefits of the discharge clearly outweigh potential adverse impacts and otherwise comply with antidegradation requirements. Moderating provisions authorized by this section shall not extend beyond December 2016 unless further authorized by the Legislature pursuant to paragraph (3)(d).

3. The department shall use the best available information to define relationships between waters discharged to, and the resulting water quality in, the Everglades Protection Area. The department or the district shall use these relationships to establish discharge limits in permits for discharges into the EAA canals and the Everglades Protection Area necessary to prevent an imbalance in the natural populations of aquatic flora or fauna in the Everglades Protection Area, and to provide a net improvement in the areas already impacted. During the implementation of the initial phase of the Long-Term Plan, permits issued by the department shall be based on BAPRT, and shall include technology-based effluent limitations consistent with the Long-Term Plan. Compliance with the phosphorus criterion shall be based upon a long-term geometric mean of concentration levels to be measured at sampling stations recognized from the research to be reasonably representative of receiving waters in the Everglades Protection Area, and so located so as to assure that the Everglades Protection Area is not altered so as to cause an imbalance in natural populations of aquatic flora and fauna and to assure a net improvement in the areas already impacted. For the Everglades National Park and the Arthur R. Marshall Loxahatchee National Wildlife Refuge, the method for measuring compliance with the phosphorus criterion shall be in a manner consistent with Appendices A and B, respectively, of the settlement agreement dated July 26, 1991, entered in case No. 88-1886-Civ-Hoeveler, United States District Court for the Southern District of Florida, that recognizes and provides for incorporation of relevant research.

4. The department's evaluation of any other water quality standards must include the department's antidegradation standards and EAA canal classifications. In recognition of the special nature of the conveyance canals of the EAA, as a component of the classification process, the department is directed to formally recognize by rulemaking existing actual beneficial uses of the conveyance canals in the EAA. This shall include recognition of the Class III designated uses of recreation, propagation and maintenance of a healthy, well-balanced population of fish and wildlife, the integrated water management purposes for which the Central and Southern Florida Flood Control Project was constructed, flood control, conveyance of water to and from Lake Okeechobee for urban and agricultural water supply, Everglades hydroperiod restoration, conveyance of water to the STAs, and navigation.

(10) LONG-TERM COMPLIANCE PERMITS.—By December 31, 2006, the department and the district shall take such action as may be necessary to implement the pre-2006 projects and strategies of the Long-Term Plan so that water delivered to the Everglades Protection Area achieves in all parts of the Everglades Protection Area state water quality standards, including the phosphorus criterion and moderating provisions.

(a) By December 31, 2003, the district shall submit to the department an application for permit modification to incorporate proposed changes to the Everglades Construction Project and other district works delivering water to the Everglades Protection Area as needed to implement the pre-2006 projects and strategies of the Long-Term Plan in all permits issued by the department, including the permits issued pursuant to subsection (9). These

changes shall be designed to achieve state water quality standards, including the phosphorus criterion and moderating provisions~~, to the maximum extent practicable~~. ~~Under no circumstances shall the project or strategy cause or contribute to violation of state water quality standards.~~ During the implementation of the initial phase of the Long-Term Plan, permits issued by the department shall be based on BAPRT, and shall include technology-based effluent limitations consistent with the Long-Term Plan, as provided in subparagraph (4)(e)3.

(b) If the Everglades Construction Project or other discharges to the Everglades Protection Area are in compliance with state water quality standards, including the phosphorus criterion, the permit application shall include:

1. A plan for maintaining compliance with the phosphorus criterion in the Everglades Protection Area.

2. A plan for maintaining compliance in the Everglades Protection Area with state water quality standards other than the phosphorus criterion.

Section 19. Paragraph (b) of subsection (3) of section 373.1502, Florida Statutes, is amended to read:

373.1502 Regulation of comprehensive plan project components.—

(3) REGULATION OF COMPREHENSIVE PLAN STRUCTURES AND FACILITIES.—

(b) The department shall issue a permit for a term of 5 years for the construction, operation, modification, or maintenance of a project component based on the criteria set forth in this section. If the department is the entity responsible for the construction, operation, modification, or maintenance of any individual project component, the district shall issue a permit for a term of 5 years based on the criteria set forth in this section. The permit application must provide reasonable assurances that:

1. The project component will achieve the design objectives set forth in the detailed design documents submitted as part of the application.

2. State water quality standards, <u>including water quality criteria and moderating provisions</u> will be met ~~to the maximum extent practicable~~. Under no circumstances shall the project component cause or contribute to violation of state water quality standards.

3. Discharges from the project component will not pose a serious danger to public health, safety, or welfare.

4. Any impacts to wetlands or threatened or endangered species resulting from implementation of the project component will be avoided, minimized, and mitigated, as appropriate.

Section 20. Paragraph (a) of subsection (2), and subsections (1), (11), and (12) of section 201.15, Florida Statutes, are reenacted to read:

201.15 Distribution of taxes collected.—All taxes collected under this chapter shall be distributed as follows and shall be subject to the service charge imposed in s. 215.20(1), except that such service charge shall not be levied against any portion of taxes pledged to debt service on bonds to the extent that the amount of the service charge is required to pay any amounts relating to the bonds:

(1) Sixty-two and sixty-three hundredths percent of the remaining taxes collected under this chapter shall be used for the following purposes:

(a) Amounts as shall be necessary to pay the debt service on, or fund debt service reserve funds, rebate obligations, or other amounts payable with respect to Preservation 2000 bonds issued pursuant to s. 375.051 and Florida Forever bonds issued pursuant to s. 215.618, shall be paid into the State Treasury to the credit of the Land Acquisition Trust Fund to be used for such purposes. The amount transferred to the Land Acquisition Trust Fund for such purposes shall not exceed $300 million in fiscal year 1999-2000 and thereafter for Preservation 2000 bonds and bonds issued to refund Preservation 2000 bonds, and $300 million in fiscal year 2000-2001 and thereafter for Florida Forever bonds. The annual amount transferred to the Land Acquisition Trust Fund for Florida Forever bonds shall not exceed $30 million in the first fiscal year in which bonds are issued. The limitation on the amount transferred shall be increased by an additional $30 million in each subsequent fiscal year, but shall not exceed a total of $300 million in any fiscal year for all bonds issued. It is the intent of the Legislature that all bonds issued to fund the Florida Forever Act be retired by December 31, 2030. Except for bonds issued to refund previously issued bonds, no series of bonds may be issued pursuant to this paragraph unless such bonds are approved and the debt service for the remainder of the fiscal year in which the bonds are issued is specifically appropriated in the General Appropriations Act. For purposes of refunding Preservation 2000 bonds, amounts designated within this section for Preservation 2000 and Florida Forever bonds may be transferred between the two programs to the extent provided for in the documents authorizing the issuance of the bonds. The Preservation 2000 bonds and Florida Forever bonds shall be equally and ratably secured by moneys distributable to the Land Acquisition Trust Fund pursuant to this section, except to the extent specifically provided otherwise by the documents authorizing the issuance of the bonds. No moneys transferred to the Land Acquisition Trust Fund pursuant to this paragraph, or earnings thereon, shall be used or made available to pay debt service on the Save Our Coast revenue bonds.

(b) The remainder of the moneys distributed under this subsection, after the required payment under paragraph (a), shall be paid into the State Treasury to the credit of the Save Our Everglades Trust Fund in amounts necessary to pay debt service, provide reserves, and pay rebate obligations and other amounts due with respect to bonds issued under s. 215.619.

(c) The remainder of the moneys distributed under this subsection, after the required payments under paragraphs (a) and (b), shall be paid into the State Treasury to the credit of the Land Acquisition Trust Fund and may be used for any purpose for which funds deposited in the Land Acquisition

Trust Fund may lawfully be used. Payments made under this paragraph shall continue until the cumulative amount credited to the Land Acquisition Trust Fund for the fiscal year under this paragraph and paragraph (2)(b) equals 70 percent of the current official forecast for distributions of taxes collected under this chapter pursuant to subsection (2). As used in this paragraph, the term "current official forecast" means the most recent forecast as determined by the Revenue Estimating Conference. If the current official forecast for a fiscal year changes after payments under this paragraph have ended during that fiscal year, no further payments are required under this paragraph during the fiscal year.

(d) The remainder of the moneys distributed under this subsection, after the required payments under paragraphs (a), (b), and (c), shall be paid into the State Treasury to the credit of the General Revenue Fund of the state to be used and expended for the purposes for which the General Revenue Fund was created and exists by law or to the Ecosystem Management and Restoration Trust Fund or to the Marine Resources Conservation Trust Fund as provided in subsection (11).

(2) Seven and fifty-six hundredths percent of the remaining taxes collected under this chapter shall be used for the following purposes:

(a) Beginning in the month following the final payment for a fiscal year under paragraph (1)(c), available moneys shall be paid into the State Treasury to the credit of the General Revenue Fund of the state to be used and expended for the purposes for which the General Revenue Fund was created and exists by law or to the Ecosystem Management and Restoration Trust Fund or to the Marine Resources Conservation Trust Fund as provided in subsection (11). Payments made under this paragraph shall continue until the cumulative amount credited to the General Revenue Fund for the fiscal year under this paragraph equals the cumulative payments made under paragraph (1)(c) for the same fiscal year.

(11) From the moneys specified in paragraphs (1)(d) and (2)(a) and prior to deposit of any moneys into the General Revenue Fund, $30 million shall be paid into the State Treasury to the credit of the Ecosystem Management and Restoration Trust Fund in fiscal year 2000-2001 and each fiscal year thereafter, to be used for the preservation and repair of the state's beaches as provided in ss. 161.091-161.212, and $2 million shall be paid into the State Treasury to the credit of the Marine Resources Conservation Trust Fund to be used for marine mammal care as provided in s. 370.0603(3).

(12) The Department of Revenue may use the payments credited to trust funds pursuant to paragraphs (1)(c) and (2)(b) and subsections (3), (4), (5), (6), (7), (8), (9), and (10) to pay the costs of the collection and enforcement of the tax levied by this chapter. The percentage of such costs which may be assessed against a trust fund is a ratio, the numerator of which is payments credited to that trust fund under this section and the denominator of which is the sum of payments made under paragraphs (1)(c) and (2)(b) and subsections (3), (4), (5), (6), (7), (8), (9), and (10).

Section 21. Section 215.619, Florida Statutes, is reenacted to read:

215.619 Bonds for Everglades restoration.—

(1) The issuance of Everglades restoration bonds to finance or refinance the cost of acquisition and improvement of land, water areas, and related property interests and resources for the purpose of implementing the Comprehensive Everglades Restoration Plan under s. 373.470 is authorized in accordance with s. 11(e), Art. VII of the State Constitution. Everglades restoration bonds, except refunding bonds, may be issued only in fiscal years 2002-2003 through 2009-2010 and may not be issued in an amount exceeding $100 million per fiscal year unless the Department of Environmental Protection has requested additional amounts in order to achieve cost savings or accelerate the purchase of land. The duration of Everglades restoration bonds may not exceed 20 annual maturities, and those bonds must mature by December 31, 2030. Except for refunding bonds, a series of bonds may not be issued unless an amount equal to the debt service coming due in the year of issuance has been appropriated by the Legislature.

(2) The state covenants with the holders of Everglades restoration bonds that it will not take any action that will materially and adversely affect the rights of the holders so long as the bonds are outstanding, including, but not limited to, a reduction in the portion of documentary stamp taxes distributable under s. 201.15(1) for payment of debt service on Preservation 2000 bonds, Florida Forever bonds, or Everglades restoration bonds.

(3) Everglades restoration bonds are payable from, and secured by a first lien on, taxes distributable under s. 201.15(1)(b) and do not constitute a general obligation of, or a pledge of the full faith and credit of, the state. Everglades restoration bonds are junior and subordinate to bonds secured by moneys distributable under s. 201.15(1)(a).

(4) The Department of Environmental Protection shall request the Division of Bond Finance of the State Board of Administration to issue Everglades restoration bonds under the State Bond Act in an amount supported by projected expenditures of the recipients of the proceeds of the bonds. The Department of Environmental Protection shall coordinate with the Division of Bond Finance to issue the bonds in a cost-effective manner consistent with cash needs.

(5) The proceeds of Everglades restoration bonds, less the costs of issuance, the costs of funding reserve accounts, and other costs with respect to the bonds, shall be deposited into the Save Our Everglades Trust Fund. The bond proceeds deposited into the Save Our Everglades Trust Fund shall be distributed by the Department of Environmental Protection as provided in s. 373.470.

(6) Lands purchased using bond proceeds under this paragraph which are later determined by the South Florida Water Management District and the Department of Environmental Protection as not needed to implement the comprehensive plan, shall either be surplused at no less than appraised value, and the proceeds from the sale of such lands shall be deposited into the Save Our Everglades Trust Fund to be used to implement the comprehensive plan, or the South Florida Water Management District shall use a different source of funds to pay for or reimburse the Save Our Everglades

Trust Fund for that portion of land not needed to implement the comprehensive plan.

(7) There may not be any sale, disposition, lease, easement, license, or other use of any land, water areas, or related property interests acquired or improved with proceeds of Everglades restoration bonds which would cause all or any portion of the interest on the bonds to be included in gross income for federal income tax purposes.

(8) Any complaint for validation of bonds issued under this section may be filed only in the circuit court of the county where the seat of state government is situated. The notice required to be published by s. 75.06 may be published only in the county where the complaint is filed, and the complaint and order of the circuit court need be served only on the state attorney of the circuit in which the action is pending.

Section 22. Subsections (4), (5), and (6) of section 373.470, Florida Statutes, are reenacted to read:

373.470 Everglades restoration.—

(4) SAVE OUR EVERGLADES TRUST FUND; FUNDS AUTHORIZED FOR DEPOSIT.—The following funds may be deposited into the Save Our Everglades Trust Fund created by s. 373.472 to finance implementation of the comprehensive plan:

(a) In fiscal year 2000-2001, funds described in s. 259.101(3).

(b) Funds described in subsection (5).

(c) Federal funds appropriated by Congress for implementation of the comprehensive plan.

(d) Any additional funds appropriated by the Legislature for the purpose of implementing the comprehensive plan.

(e) Gifts designated for implementation of the comprehensive plan from individuals, corporations, or other entities.

(f) Funds made available pursuant to s. 201.15 for debt service for Everglades restoration bonds.

(5) SAVE OUR EVERGLADES TRUST FUND SUPPLEMENTED.—

(a)1. For fiscal year 2000-2001, $50 million of state funds shall be deposited into the Save Our Everglades Trust Fund created by s. 373.472.

2. For each year of the 9 consecutive years beginning with fiscal year 2001-2002, $75 million of state funds shall be deposited into the Save Our Everglades Trust Fund created by s. 373.472.

3. As an alternative to subparagraph 2., proceeds of bonds issued under s. 215.619 may be deposited into the Save Our Everglades Trust Fund created under s. 373.472. To enhance flexibility, funds to be deposited into

the Save Our Everglades Trust Fund may consist of any combination of state funds and Everglades restoration bonds.

(b) For each year of the 2 consecutive years beginning with fiscal year 2000-2001, the department shall deposit $25 million of the funds allocated to the district by the department under s. 259.105(11)(a) into the Save Our Everglades Trust Fund created by s. 373.472.

(6) DISTRIBUTIONS FROM SAVE OUR EVERGLADES TRUST FUND.—

(a) Except for funds appropriated for debt service, the department shall distribute funds in the Save Our Everglades Trust Fund to the district in accordance with a legislative appropriation and s. 373.026(8)(b) and (c). Distribution of funds from the Save Our Everglades Trust Fund shall be equally matched by the cumulative contributions from all local sponsors by fiscal year 2009-2010 by providing funding or credits toward project components. The dollar value of in-kind work by local sponsors in furtherance of the comprehensive plan and existing interest in public lands needed for a project component are credits towards the local sponsors' contributions.

(b) The department shall distribute funds in the Save Our Everglades Trust Fund to the district in accordance with a legislative appropriation for debt service for Everglades restoration bonds.

Section 23. Subsection (1) of section 373.472, Florida Statutes, is reenacted to read:

373.472 Save Our Everglades Trust Fund.—

(1) There is created within the Department of Environmental Protection the Save Our Everglades Trust Fund. Funds in the trust fund shall be expended to implement the comprehensive plan defined in s. 373.470(2)(a) and pay debt service for Everglades restoration bonds issued pursuant to s. 215.619. The trust fund shall serve as the repository for state, local, and federal project contributions in accordance with s. 373.470(4).

Section 24. Section 6 of chapter 2002-261, Laws of Florida, is reenacted to read:

Section 6. In accordance with s. 215.98(1), the Legislature determines that the issuance of Everglades restoration bonds under section 2 of this act is in the best interest of the state and should be implemented.

Section 25. If any law amended by this act was also amended by a law enacted at the 2003 Regular Session of the Legislature, such laws shall be construed as if they had been enacted during the same session of the Legislature, and full effect shall be given to each if possible.

Section 26. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2003.

Approved by the Governor June 10, 2003.

Filed in Office Secretary of State June 10, 2003.

CHAPTER 2003-12

Committee Substitute for Senate Bill No. 626

An act relating to the Everglades Forever Act; amending s. 373.4592, F.S.; providing definitions; re-naming the Everglades Swim Plan as the Everglades Long-Term Plan; establishing legislative findings and providing legislative intent; providing that revisions to the Long-Term Plan be incorporated into the plan; requiring implementation of the initial phase of the Long-Term Plan; providing for review by the Department of Environmental Protection of certain projects and incremental phosphorus reduction measures; requiring that the initial phase of the Long-Term Plan achieve water quality standards relating to phosphorus criterion in the Everglades Protection Area; providing for the use of ad valorem tax proceeds; providing a schedule for enhancements to the Everglades Construction Project; deleting obsolete provisions; providing that rules adopting phosphorus criterion may include moderating provisions; requiring that permits issued by the department be based on best available phosphorus reduction technology and include technology-based effluent limitations; providing for computation of the Everglades Agricultural Area privilege tax; implementing the provisions of s. 7(b), Art. II of the State Constitution; providing for the computation of the C-139 agricultural privilege tax; providing permit requirements for long-term compliance permits; repealing s. 3 of chapter 96-412, Laws of Florida; repealing s. 84 of chapter 96-321, Laws of Florida; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2), (3), and (4), paragraphs (c) and (h) of subsection (6), and subsections (7), (10), and (16), of section 373.4592, Florida Statutes, are amended, and subsection (17) of that section is reenacted, to read:

373.4592 Everglades improvement and management.—

(2) DEFINITIONS.—As used in this section:

(a) "Best available phosphorus reduction technology" or "BAPRT" means a combination of BMPs and STAs which includes a continuing research and monitoring program to reduce outflow concentrations of phosphorus so as to achieve the phosphorus criterion in the Everglades Protection Area at the earliest practicable date.

(b)~~(a)~~ "Best management practice" or "BMP" means a practice or combination of practices determined by the district, in cooperation with the department, based on research, field-testing, and expert review, to be the most effective and practicable, including economic and technological considerations, on-farm means of improving water quality in agricultural discharges to a level that balances water quality improvements and agricultural productivity.

(c)~~(b)~~ "C-139 Basin" or "Basin" means those lands described in subsection (16).

(d)~~(c)~~ "Department" means the Florida Department of Environmental Protection.

(e)~~(d)~~ "District" means the South Florida Water Management District.

(f)~~(e)~~ "Everglades Agricultural Area" or "EAA" means the Everglades Agricultural Area, which are those lands described in subsection (15).

(g)~~(f)~~ "Everglades Construction Project" means the project described in the February 15, 1994, conceptual design document together with construction and operation schedules on file with the South Florida Water Management District, except as modified by this section and further described in the Long-Term Plan.

(h)~~(g)~~ "Everglades Program" means the program of projects, regulations, and research provided by this section, including the Everglades Construction Project.

(i)~~(h)~~ "Everglades Protection Area" means Water Conservation Areas 1, 2A, 2B, 3A, and 3B, the Arthur R. Marshall Loxahatchee National Wildlife Refuge, and the Everglades National Park.

(j) "Long-Term Plan" or "Plan" means the district's "Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-Term Water Quality Goals Final Report" dated March 2003, as modified herein.

(k)~~(i)~~ "Master permit" means a single permit issued to a legally responsible entity defined by rule, authorizing the construction, alteration, maintenance, or operation of multiple stormwater management systems that may be owned or operated by different persons and which provides an opportunity to achieve collective compliance with applicable department and district rules and the provisions of this section.

(l) "Optimization" shall mean maximizing the potential treatment effectiveness of the STAs through measures such as additional compartmentalization, improved flow control, vegetation management, or operation refinements, in combination with improvements where practicable in urban and agricultural BMPs, and includes integration with Congressionally authorized components of the Comprehensive Everglades Restoration Plan or "CERP".

(m)~~(j)~~ "Phosphorus criterion" means a numeric interpretation for phosphorus of the Class III narrative nutrient criterion.

(n)~~(k)~~ "Stormwater management program" shall have the meaning set forth in s. 403.031(15).

(o)~~(l)~~ "Stormwater treatment areas" or "STAs" means those treatment areas described and depicted in the district's conceptual design document of February 15, 1994, and any modifications as provided in this section.

(p) "Technology-based effluent limitation" or "TBEL" means the technology-based treatment requirements as defined in Rule 62-650.200, Florida Administrative Code.

(3) EVERGLADES LONG-TERM ~~SWIM~~ PLAN.—

(a) The Legislature finds that the Everglades Program required by this section establishes more extensive and comprehensive requirements for surface water improvement and management within the Everglades than the SWIM plan requirements provided in ss. 373.451-373.456. In order to avoid duplicative requirements, and in order to conserve the resources available to the district, the SWIM plan requirements of those sections shall not apply to the Everglades Protection Area and the EAA during the term of the Everglades Program, and the district will neither propose, nor take final agency action on, any Everglades SWIM plan for those areas until the Everglades Program is fully implemented.~~; however,~~ Funds under s. 259.101(3)(b) may be used for acquisition of lands necessary to implement the Everglades Construction Project, to the extent these funds are identified in the Statement of Principles of July 1993. The district's actions in implementing the Everglades Construction Project relating to the responsibilities of the EAA and C-139 Basin for funding and water quality compliance in the EAA and the Everglades Protection Area shall be governed by this section. Other strategies or activities in the March 1992 Everglades SWIM plan may be implemented if otherwise authorized by law.

(b) The Legislature finds that the most reliable means of optimizing the performance of STAs and achieving reasonable further progress in reducing phosphorus entering the Everglades Protection Area is to utilize a long-term planning process. The Legislature finds that the Long-Term Plan provides the best available phosphorus reduction technology based upon a combination of the BMPs and STAs described in the Plan provided that the Plan shall seek to achieve the phosphorus criterion in the Everglades Protection Area. The Long-Term Plan will be implemented and revised with the planning goal and objective of achieving the phosphorus criterion to be adopted pursuant to subparagraph (4)(e)2. in the Everglades Protection Area, and not based on any planning goal or objective in the Plan that is inconsistent with this section. Revisions to the Long-Term Plan shall be incorporated through an adaptive management approach including a process development and engineering component to identify and implement incremental optimization measures for further phosphorus reductions.

(c) It is the intent of the Legislature that implementation of the Long-Term Plan shall be integrated and consistent with the implementation of the projects and activities in the Congressionally authorized components of the CERP so that unnecessary and duplicative costs will be avoided. Nothing in this section shall modify any existing cost share or responsibility provided for projects listed in s. 528 of the Water Resources Development Act of 1996 (110 Stat. 3769) or provided for projects listed in section 601 of the Water Resources Development Act of 2000 (114 Stat. 2572). The Legislature does not intend for the provisions of this section to diminish commitments made by the State of Florida to restore and maintain water quality in the Everglades Protection Area, including the federal lands in the settlement agreement referenced in paragraph (4)(e).

(d) The Legislature recognizes that the Long-Term Plan contains an initial phase and a 10-year second phase. The Legislature intends that a review of this act at least 10 years after implementation of the initial phase is appropriate and necessary to the public interest. The review is the best way to ensure that discharges to the Everglades Protection Area are achieving state water quality standards, including phosphorus reduction, to the maximum extent practicable, and are using the best technology available. A 10-year second phase of the Long-Term Plan must be approved by the Legislature and codified in this act prior to implementation of projects, but not prior to development, review, and approval of projects by the department.

(e) The Long-Term Plan shall be implemented for an initial 13-year phase (2003-2016) and shall, to the maximum extent practicable, achieve water quality standards relating to the phosphorus criterion in the Everglades Protection Area as determined by a network of monitoring stations established for this purpose. Not later than December 31, 2008, and each 5 years thereafter, the department shall review and approve incremental phosphorus reduction measures to be implemented at the earliest practicable date.

(4) EVERGLADES PROGRAM.—

(a) Everglades Construction Project.—The district shall implement the Everglades Construction Project. By the time of completion of the project, the state, district, or other governmental authority shall purchase the inholdings in the Rotenberger and such other lands necessary to achieve a 2:1 mitigation ratio for the use of Brown's Farm and other similar lands, including those needed for the STA 1 Inflow and Distribution Works. The inclusion of public lands as part of the project is for the purpose of treating waters not coming from the EAA for hydroperiod restoration. It is the intent of the Legislature that the district aggressively pursue the implementation of the Everglades Construction Project in accordance with the schedule in this subsection. The Legislature recognizes that adherence to the schedule is dependent upon factors beyond the control of the district, including the timely receipt of funds from all contributors. The district shall take all reasonable measures to complete timely performance of the schedule in this section in order to finish the Everglades Construction Project. The district shall not delay implementation of the project beyond the time delay caused by those circumstances and conditions that prevent timely performance. The district shall not levy ad valorem taxes in excess of 0.1 mill within the Okeechobee Basin for the purposes of the design, construction, and acquisition of the Everglades Construction Project. The ad valorem tax proceeds not exceeding 0.1 mill levied within the Okeechobee Basin for such purposes shall also be used for design, construction, and implementation of the initial phase of the Long-Term Plan, including operation and maintenance, and research for the projects and strategies in the initial phase of the Long-Term Plan, and including the enhancements and operation and maintenance of the Everglades Construction Project and shall be the sole direct district contribution from district ad valorem taxes appropriated or expended for the design, construction, and acquisition of the Everglades Construction Project unless the Legislature by specific amendment to this section increases the 0.1 mill ad valorem tax contribution, increases the agricultural privilege

taxes, or otherwise reallocates the relative contribution by ad valorem taxpayers and taxpayers paying the agricultural privilege taxes toward the funding of the design, construction, and acquisition of the Everglades Construction Project. Notwithstanding the provisions of s. 200.069 to the contrary, any millage levied under the 0.1 mill limitation in this paragraph shall be included as a separate entry on the Notice of Proposed Property Taxes pursuant to s. 200.069. Once the STAs are completed, the district shall allow these areas to be used by the public for recreational purposes in the manner set forth in s. 373.1391(1) ~~s. 373.59(11)~~, considering the suitability of these lands for such uses. These lands shall be made available for recreational use unless the district governing board can demonstrate that such uses are incompatible with the restoration goals of the Everglades Construction Project or the water quality and hydrological purposes of the STAs or would otherwise adversely impact the implementation of the project. The district shall give preferential consideration to the hiring of agricultural workers displaced as a result of the Everglades Construction Project, consistent with their qualifications and abilities, for the construction and operation of these STAs. The following milestones apply to the completion of the Everglades Construction Project as depicted in the February 15, 1994, conceptual design document:

1. The district must complete the final design of the STA 1 East and West and pursue STA 1 East project components as part of a cost-shared program with the Federal Government. The district must be the local sponsor of the federal project that will include STA 1 East, and STA 1 West if so authorized by federal law~~. Land acquisition shall be completed for STA 1 West by April 1, 1996, and for STA 1 East by July 1, 1998~~;

2. Construction of STA 1 East is to be completed under the direction of the United States Army Corps of Engineers in conjunction with the currently authorized C-51 flood control project ~~by July 1, 2002~~;

3. The district must complete construction of STA 1 West and STA 1 Inflow and Distribution Works under the direction of the United States Army Corps of Engineers, if the direction is authorized under federal law, in conjunction with the currently authorized C-51 flood control project~~, by January 1, 1999~~;

~~4. The district must complete construction of STA 2 by February 1, 1999;~~

4.~~5.~~ The district must complete construction of STA 3/4 by October 1, 2003; however, the district may modify this schedule to incorporate and accelerate enhancements to STA 3/4 as directed in the Long-Term Plan;

~~6. The district must complete construction of STA 5 by January 1, 1999; and~~

5.~~7.~~ The district must complete construction of STA 6; ~~by October 1, 1997.~~

6. The district must, by December 31, 2006, complete construction of enhancements to the Everglades Construction Project recommended in the Long-Term Plan and initiate other pre-2006 strategies in the plan; and

7.~~8.~~ East Beach Water Control District, South Shore Drainage District, South Florida Conservancy District, East Shore Water Control District, and the lessee of agricultural lease number 3420 shall complete any system modifications described in the Everglades Construction Project to the extent that funds are available from the Everglades Fund. These entities shall divert the discharges described within the Everglades Construction Project within 60 days of completion of construction of the appropriate STA. Such required modifications shall be deemed to be a part of each district's plan of reclamation pursuant to chapter 298.

(b) Everglades water supply and hydroperiod improvement and restoration.—

1. A comprehensive program to revitalize the Everglades shall include programs and projects to improve the water quantity reaching the Everglades Protection Area at optimum times and improve hydroperiod deficiencies in the Everglades ecosystem. To the greatest extent possible, wasteful discharges of fresh water to tide shall be reduced, and water conservation practices and reuse measures shall be implemented by water users, consistent with law. Water supply management must include improvement of water quantity reaching the Everglades, correction of long-standing hydroperiod problems, and an increase in the total quantity of water flowing through the system. Water supply management must provide water supply for the Everglades National Park, the urban and agricultural areas, and the Florida Bay and must replace water previously available from the coastal ridge areas of southern Dade County. The Everglades Construction Project redirects some water currently lost to tide. It is an important first step in completing hydroperiod improvement.

2. The district shall operate the Everglades Construction Project as specified in the February 15, 1994, conceptual design document, to provide additional inflows to the Everglades Protection Area. The increased flow from the project shall be directed to the Everglades Protection Area as needed to achieve an average annual increase of 28 percent compared to the baseline years of 1979 to 1988. Consistent with the design of the Everglades Construction Project and without demonstratively reducing water quality benefits, the regulatory releases will be timed and distributed to the Everglades Protection Area to maximize environmental benefits.

3. The district shall operate the Everglades Construction Project in accordance with the February 15, 1994, conceptual design document to maximize the water quantity benefits and improve the hydroperiod of the Everglades Protection Area. All reductions of flow to the Everglades Protection Area from BMP implementation will be replaced. The district shall develop a model to be used for quantifying the amount of water to be replaced. ~~The district shall publish in the Florida Administrative Weekly a notice of rule development on the model no later than July 1, 1994, and a notice of rulemaking no later than July 1, 1995.~~ The timing and distribution of this replaced water will be directed to the Everglades Protection Area to maximize the natural balance of the Everglades Protection Area.

4. The Legislature recognizes the complexity of the Everglades watershed, as well as legal mandates under Florida and federal law. As local

sponsor of the Central and Southern Florida Flood Control Project, the district must coordinate its water supply and hydroperiod programs with the Federal Government. Federal planning, research, operating guidelines, and restrictions for the Central and Southern Florida Flood Control Project now under review by federal agencies will provide important components of the district's Everglades Program. The department and district shall use their best efforts to seek the amendment of the authorized purposes of the project to include water quality protection, hydroperiod restoration, and environmental enhancement as authorized purposes of the Central and Southern Florida Flood Control Project, in addition to the existing purposes of water supply, flood protection, and allied purposes. Further, the department and the district shall use their best efforts to request that the Federal Government include in the evaluation of the regulation schedule for Lake Okeechobee a review of the regulatory releases, so as to facilitate releases of water into the Everglades Protection Area which further improve hydroperiod restoration.

5. The district, through cooperation with the federal and state agencies, shall develop other programs and methods to increase the water flow and improve the hydroperiod of the Everglades Protection Area.

6. Nothing in this section is intended to provide an allocation or reservation of water or to modify the provisions of part II. All decisions regarding allocations and reservations of water shall be governed by applicable law.

7. The district shall proceed to expeditiously implement the minimum flows and levels for the Everglades Protection Area as required by s. 373.042 and shall expeditiously complete the Lower East Coast Water Supply Plan.

(c) STA 3/4 modification.—The Everglades Program will contribute to the restoration of the Rotenberger and Holey Land tracts. The Everglades Construction Project provides a first step toward restoration by improving hydroperiod with treated water for the Rotenberger tract and by providing a source of treated water for the Holey Land. It is further the intent of the Legislature that the easternmost tract of the Holey Land, known as the "Toe of the Boot," be removed from STA 3/4 under the circumstances set forth in this paragraph. The district shall proceed to modify the Everglades Construction Project, provided that the redesign achieves at least as many environmental and hydrological benefits as are included in the original design, including treatment of waters from sources other than the EAA, and does not delay construction of STA 3/4. The district is authorized to use eminent domain to acquire alternative lands, only if such lands are located within 1 mile of the northern border of STA 3/4.

(d) Everglades research and monitoring program.—

1. ~~By January 1996,~~ The department and the district shall review and evaluate available water quality data for the Everglades Protection Area and tributary waters and identify any additional information necessary to adequately describe water quality in the Everglades Protection Area and tributary waters. ~~By such date,~~ The department and the district shall also initiate a research and monitoring program to generate such additional information identified and to evaluate the effectiveness of the BMPs and

STAs, as they are implemented, in improving water quality and maintaining designated and existing beneficial uses of the Everglades Protection Area and tributary waters. As part of the program, the district shall monitor all discharges into the Everglades Protection Area for purposes of determining compliance with state water quality standards.

2. The research and monitoring program shall evaluate the ecological and hydrological needs of the Everglades Protection Area, including the minimum flows and levels. Consistent with such needs, the program shall also evaluate water quality standards for the Everglades Protection Area and for the canals of the EAA, so that these canals can be classified in the manner set forth in paragraph (e) and protected as an integral part of the water management system which includes the STAs of the Everglades Construction Project and allows landowners in the EAA to achieve applicable water quality standards compliance by BMPs and STA treatment to the extent this treatment is available and effective.

3. The research and monitoring program shall include research seeking to optimize the design and operation of the STAs, including research to reduce outflow concentrations, and to identify other treatment and management methods and regulatory programs that are superior to STAs in achieving the intent and purposes of this section.

4. The research and monitoring program shall be conducted ~~to allow completion by December 2001 of any research necessary~~ to allow the department to propose a phosphorus criterion in the Everglades Protection Area, and to evaluate existing state water quality standards applicable to the Everglades Protection Area and existing state water quality standards and classifications applicable to the EAA canals. In developing the phosphorus criterion, the department shall also consider the minimum flows and levels for the Everglades Protection Area and the district's water supply plans for the Lower East Coast.

~~5. The district, in cooperation with the department, shall prepare a peer-reviewed interim report regarding the research and monitoring program, which shall be submitted no later than January 1, 1999, to the Governor, the President of the Senate, and the Speaker of the House of Representatives for their review. The interim report shall summarize all data and findings available as of July 1, 1998, on the effectiveness of STAs and BMPs in improving water quality. The interim report shall also include a summary of the then-available data and findings related to the following: the Lower East Coast Water Supply Plan of the district, the United States Environmental Protection Agency Everglades Mercury Study, the United States Army Corps of Engineers South Florida Ecosystem Restoration Study, the results of research and monitoring of water quality and quantity in the Everglades region, the degree of phosphorus discharge reductions achieved by BMPs and agricultural operations in the region, the current information on the ecological and hydrological needs of the Everglades, and the costs and benefits of phosphorus reduction alternatives. Prior to finalizing the interim report, the district shall conduct at least one scientific workshop and two public hearings on its proposed interim report. One public hearing must be held in Palm Beach County and the other must be held in either Dade or~~

~~Broward County. The interim report shall be used by the department and the district in making any decisions regarding the implementation of the Everglades Construction Project subsequent to the completion of the interim report. The construction of STAs 3/4 shall not be commenced until 90 days after the interim report has been submitted to the Governor and the Legislature.~~

5.~~6.~~ Beginning January 1, 2000, the district and the department shall annually issue a peer-reviewed report regarding the research and monitoring program that summarizes all data and findings. The department shall provide copies of the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report shall identify water quality parameters, in addition to phosphorus, which exceed state water quality standards or are causing or contributing to adverse impacts in the Everglades Protection Area.

6.~~7.~~ The district shall continue research seeking to optimize the design and operation of STAs and to identify other treatment and management methods that are superior to STAs in achieving optimum water quality and water quantity for the benefit of the Everglades. The district shall optimize the design and operation of the STAs described in the Everglades Construction Project prior to expanding their size. Additional methods to achieve compliance with water quality standards shall not be limited to more intensive management of the STAs.

(e) Evaluation of water quality standards.—

1. The department and the district shall employ all means practicable to complete by December 31, 1998, any additional research necessary to:

a. Numerically interpret for phosphorus the Class III narrative nutrient criterion necessary to meet water quality standards in the Everglades Protection Area; and

b. Evaluate existing water quality standards applicable to the Everglades Protection Area and EAA canals.

~~This research shall be completed no later than December 31, 2001.~~

2. ~~By December 31, 2001, the department shall file a notice of rulemaking in the Florida Administrative Weekly to establish a phosphorus criterion in the Everglades Protection Area.~~ In no case shall such phosphorus criterion allow waters in the Everglades Protection Area to be altered so as to cause an imbalance in the natural populations of aquatic flora or fauna. The phosphorus criterion shall be 10 parts per billion (ppb) in the Everglades Protection Area in the event the department does not adopt by rule such criterion by December 31, 2003. However, in the event the department fails to adopt a phosphorus criterion on or before December 31, 2002, any person whose substantial interests would be affected by the rulemaking shall have the right, on or before February 28, 2003, to petition for a writ of mandamus to compel the department to adopt by rule such criterion. Venue for the mandamus action must be Leon County. The court may stay implementation of the 10 parts per billion (ppb) criterion during the pendency of the

mandamus proceeding upon a demonstration by the petitioner of irreparable harm in the absence of such relief. The department's phosphorus criterion, whenever adopted, shall supersede the 10 parts per billion (ppb) criterion otherwise established by this section, but shall not be lower than the natural conditions of the Everglades Protection Area and shall take into account spatial and temporal variability. The department's rule adopting a phosphorus criterion may include moderating provisions during the implementation of the initial phase of the Long-Term Plan authorizing discharges based upon BAPRT providing net improvement to impacted areas. Discharges to unimpacted areas may also be authorized by moderating provisions, which shall require BAPRT, and which must be based upon a determination by the department that the environmental benefits of the discharge clearly outweigh potential adverse impacts.

3. The department shall use the best available information to define relationships between waters discharged to, and the resulting water quality in, the Everglades Protection Area. The department or the district shall use these relationships to establish discharge limits in permits for discharges into the EAA canals and the Everglades Protection Area necessary to prevent an imbalance in the natural populations of aquatic flora or fauna in the Everglades Protection Area, and to provide a net improvement in the areas already impacted. During the implementation of the initial phase of the Long-Term Plan, permits issued by the department shall be based on BAPRT, and shall include technology-based effluent limitations consistent with the Long-Term Plan. Compliance with the phosphorus criterion shall be based upon a long-term geometric mean of concentration levels to be measured at sampling stations recognized from the research to be reasonably representative of receiving waters in the Everglades Protection Area, and so located so as to assure that the Everglades Protection Area is not altered so as to cause an imbalance in natural populations of aquatic flora and fauna and to assure a net improvement in the areas already impacted. For the Everglades National Park and the Arthur R. Marshall Loxahatchee National Wildlife Refuge, the method for measuring compliance with the phosphorus criterion shall be in a manner consistent with Appendices A and B, respectively, of the settlement agreement dated July 26, 1991, entered in case No. 88-1886-Civ-Hoeveler, United States District Court for the Southern District of Florida, that recognizes and provides for incorporation of relevant research.

4. The department's evaluation of any other water quality standards must include the department's antidegradation standards and EAA canal classifications. In recognition of the special nature of the conveyance canals of the EAA, as a component of the classification process, the department is directed to formally recognize by rulemaking existing actual beneficial uses of the conveyance canals in the EAA. This shall include recognition of the Class III designated uses of recreation, propagation and maintenance of a healthy, well-balanced population of fish and wildlife, the integrated water management purposes for which the Central and Southern Florida Flood Control Project was constructed, flood control, conveyance of water to and from Lake Okeechobee for urban and agricultural water supply, Everglades hydroperiod restoration, conveyance of water to the STAs, and navigation.

(f) EAA best management practices.—

1. The district, in cooperation with the department, shall develop and implement a water quality monitoring program to evaluate the effectiveness of the BMPs in achieving and maintaining compliance with state water quality standards and restoring and maintaining designated and existing beneficial uses. The program shall include an analysis of the effectiveness of the BMPs in treating constituents that are not being significantly improved by the STAs. The monitoring program shall include monitoring of appropriate parameters at representative locations.

2. The district shall continue to require and enforce the BMP and other requirements of chapters 40E-61 and 40E-63, Florida Administrative Code, during the terms of the existing permits issued pursuant to those rules. Chapter 40E-61, Florida Administrative Code, may be amended to include the BMPs required by chapter 40E-63, Florida Administrative Code. Prior to the expiration of existing permits, and during each 5-year term of subsequent permits as provided for in this section, those rules shall be amended to implement a comprehensive program of research, testing, and implementation of BMPs that will address all water quality standards within the EAA and Everglades Protection Area. Under this program:

a. EAA landowners, through the EAA Environmental Protection District or otherwise, shall sponsor a program of BMP research with qualified experts to identify appropriate BMPs.

b. Consistent with the water quality monitoring program, BMPs will be field-tested in a sufficient number of representative sites in the EAA to reflect soil and crop types and other factors that influence BMP design and effectiveness.

c. BMPs as required for varying crops and soil types shall be included in permit conditions in the 5-year permits issued pursuant to this section.

d. The district shall conduct research in cooperation with EAA landowners to identify water quality parameters that are not being significantly improved either by the STAs or the BMPs, and to identify further BMP strategies needed to address these parameters.

3. The Legislature finds that through the implementation of the Everglades BMPs Program and the implementation of the Everglades Construction Project, reasonable further progress will be made towards addressing water quality requirements of the EAA canals and the Everglades Protection Area. Permittees within the EAA and the C-139 Basin who are in full compliance with the conditions of permits under chapters 40E-61 and 40E-63, Florida Administrative Code, have made all payments required under the Everglades Program, and are in compliance with subparagraph (a)8., if applicable, shall not be required to implement additional water quality improvement measures, prior to December 31, 2006, other than those required by subparagraph 2., with the following exceptions:

a. Nothing in this subparagraph shall limit the existing authority of the department or the district to limit or regulate discharges that pose a significant danger to the public health and safety; and

b. New land uses and new stormwater management facilities other than alterations to existing agricultural stormwater management systems for water quality improvements shall not be accorded the compliance established by this section. Permits may be required to implement improvements or alterations to existing agricultural water management systems.

4. As of December 31, 2006, all permits, including those issued prior to that date, shall require implementation of additional water quality measures, taking into account the water quality treatment actually provided by the STAs and the effectiveness of the BMPs. As of that date, no permittee's discharge shall cause or contribute to any violation of water quality standards in the Everglades Protection Area.

5. Effective immediately, landowners within the C-139 Basin shall not collectively exceed an annual average loading of phosphorus ~~of 28.7 metric tons~~ based proportionately on the historical rainfall for the C-139 Basin over the period of October 1, 1978, to September 30, 1988. New surface inflows shall not increase the annual average loading of phosphorus stated above. Provided that the C-139 Basin does not exceed this annual average loading, all landowners within the Basin shall be in compliance for that year. Compliance determinations for individual landowners within the C-139 Basin for remedial action, if the Basin is determined by the district to be out of compliance for that year, shall be based on the landowners' proportional share of the total phosphorus loading ~~of 28.7 metric tons~~. The total phosphorus discharge load shall be determined as set forth in Appendix B2 of Rule 40E-63, Everglades Program, Florida Administrative Code, ~~by a method consistent with Appendix 40E-63-3, Florida Administrative Code, disregarding the 25-percent phosphorus reduction factor~~.

6. The district, in cooperation with the department, shall develop and implement a water quality monitoring program to evaluate the quality of the discharge from the C-139 Basin. Upon determination by the department or the district that the C-139 Basin is exceeding any presently existing water quality standards, the district shall require landowners within the C-139 Basin to implement BMPs appropriate to the land uses within the C-139 Basin consistent with subparagraph 2. Thereafter, the provisions of subparagraphs 2.-4. shall apply to the landowners within the C-139 Basin.

(g) Monitoring and control of exotic species.—

1. The district shall establish a biological monitoring network throughout the Everglades Protection Area and shall prepare a survey of exotic species at least every 2 years.

2. In addition, the district shall establish a program to coordinate with federal, state, or other governmental entities the control of continued expansion and the removal of these exotic species. The district's program shall give high priority to species affecting the largest areal extent within the Everglades Protection Area.

(6) EVERGLADES AGRICULTURAL PRIVILEGE TAX.—

(c) The initial Everglades agricultural privilege tax roll shall be certified for the tax notices mailed in November 1994. Incentive credits to the Everglades agricultural privilege taxes to be included on the initial Everglades agricultural privilege tax roll, if any, shall be based upon the total phosphorus load reduction for the year ending April 30, 1993. The Everglades agricultural privilege taxes for each year shall be computed in the following manner:

1. Annual Everglades agricultural privilege taxes shall be charged for the privilege of conducting an agricultural trade or business on each acre of real property or portion thereof. The annual Everglades agricultural privilege tax shall be $24.89 per acre for the tax notices mailed in November 1994 through November 1997; $27 per acre for the tax notices mailed in November 1998 through November 2001; $31 per acre for the tax notices mailed in November 2002 through November 2005; and $35 per acre for the tax notices mailed in November 2006 through November 2013.

2. It is the intent of the Legislature to encourage the performance of best management practices to maximize the reduction of phosphorus loads at points of discharge from the EAA by providing an incentive credit against the Everglades agricultural privilege taxes set forth in subparagraph 1. The total phosphorus load reduction shall be measured for the entire EAA by comparing the actual measured total phosphorus load attributable to the EAA for each annual period ending on April 30 to the total estimated phosphorus load that would have occurred during the 1979-1988 base period using the model for total phosphorus load determinations provided in chapter 40E-63, Florida Administrative Code, utilizing the technical information and procedures contained in Section IV-EAA Period of Record Flow and Phosphorus Load Calculations; Section V-Monitoring Requirements; and Section VI-Phosphorus Load Allocations and Compliance Calculations of the Draft Technical Document in Support of chapter 40E-63, Florida Administrative Code - Works of the District within the Everglades, March 3, 1992, and the Standard Operating Procedures for Water Quality Collection in Support of the Everglades Water Condition Report, dated February 18, 1994. The model estimates the total phosphorus load that would have occurred during the 1979-1988 base period by substituting the rainfall conditions for such annual period ending April 30 for the conditions that were used to calibrate the model for the 1979-1988 base period. The data utilized to calculate the actual loads attributable to the EAA shall be adjusted to eliminate the effect of any load and flow that were not included in the 1979-1988 base period as defined in chapter 40E-63, Florida Administrative Code. The incorporation of the method of measuring the total phosphorus load reduction provided in this subparagraph is intended to provide a legislatively approved aid to the governing board of the district in making an annual ministerial determination of any incentive credit.

3. Phosphorus load reductions calculated in the manner described in subparagraph 2. and rounded to the nearest whole percentage point for each annual period beginning on May 1 and ending on April 30 shall be used to compute incentive credits to the Everglades agricultural privilege taxes to be included on the annual tax notices mailed in November of the next ensuing calendar year. Incentive credits, if any, will reduce the Everglades

agricultural privilege taxes set forth in subparagraph 1. only to the extent that the phosphorus load reduction exceeds 25 percent. Subject to subparagraph 4., the reduction of phosphorus load by each percentage point in excess of 25 percent, computed for the 12-month period ended on April 30 of the calendar year immediately preceding certification of the Everglades agricultural privilege tax, shall result in the following incentive credits: $0.33 per acre for the tax notices mailed in November 1994 through November 1997; $0.54 per acre for the tax notices mailed in November 1998 through November 2001; $0.61 per acre for the tax notices mailed in November 2002 through November 2005, and $0.65 per acre for the tax notices mailed in November 2006 through November 2013. The determination of incentive credits, if any, shall be documented by resolution of the governing board of the district adopted prior to or at the time of the adoption of its resolution certifying the annual Everglades agricultural privilege tax roll to the appropriate tax collector.

4. Notwithstanding subparagraph 3., incentive credits for the performance of best management practices shall not reduce the minimum annual Everglades agricultural privilege tax to less than $24.89 per acre, which annual Everglades agricultural privilege tax as adjusted in the manner required by paragraph (e) shall be known as the "minimum tax." To the extent that the application of incentive credits for the performance of best management practices would reduce the annual Everglades agricultural privilege tax to an amount less than the minimum tax, then the unused or excess incentive credits for the performance of best management practices shall be carried forward, on a phosphorus load percentage basis, to be applied as incentive credits in subsequent years. Any unused or excess incentive credits remaining after certification of the Everglades agricultural privilege tax roll for the tax notices mailed in November 2013 shall be canceled.

5. Notwithstanding the schedule of Everglades agricultural privilege taxes set forth in subparagraph 1., the owner, lessee, or other appropriate interestholder of any property shall be entitled to have the Everglades agricultural privilege tax for any parcel of property reduced to the minimum tax, commencing with the tax notices mailed in November 1996 for parcels of property participating in the early baseline option as defined in chapter 40E-63, Florida Administrative Code, and with the tax notices mailed in November 1997 for parcels of property not participating in the early baseline option, upon compliance with the requirements set forth in this subparagraph. The owner, lessee, or other appropriate interestholder shall file an application with the executive director of the district prior to July 1 for consideration of reduction to the minimum tax on the Everglades agricultural privilege tax roll to be certified for the tax notice mailed in November of the same calendar year and shall have the burden of proving the reduction in phosphorus load attributable to such parcel of property. The phosphorus load reduction for each discharge structure serving the parcel shall be measured as provided in chapter 40E-63, Florida Administrative Code, and the permit issued for such property pursuant to chapter 40E-63, Florida Administrative Code. A parcel of property which has achieved the following annual phosphorus load reduction standards shall have the minimum tax included on the annual tax notice mailed in November of the next ensuing calendar year: 30 percent or more for the tax notices mailed in November 1994

through November 1997; 35 percent or more for the tax notices mailed in November 1998 through November 2001; 40 percent or more for the tax notices mailed in November 2002 through November 2005; and 45 percent or more for the tax notices mailed in November 2006 through November 2013. In addition, any parcel of property that achieves an annual flow weighted mean concentration of 50 parts per billion (ppb) of phosphorus at each discharge structure serving the property for any year ending April 30 shall have the minimum tax included on the annual tax notice mailed in November of the next ensuing calendar year. Any annual phosphorus reductions that exceed the amount necessary to have the minimum tax included on the annual tax notice for any parcel of property shall be carried forward to the subsequent years' phosphorus load reduction to determine if the minimum tax shall be included on the annual tax notice. The governing board of the district shall deny or grant the application by resolution adopted prior to or at the time of the adoption of its resolution certifying the annual Everglades agricultural privilege tax roll to the appropriate tax collector.

6. The annual Everglades agricultural privilege tax for the tax notices mailed in November 2014 through November 2016 shall be $25 per acre and for tax notices mailed in November 2017 and thereafter shall be $10 per acre.

(h) In recognition of the findings set forth in subsection (1), the Legislature finds that the assessment and use of the Everglades agricultural privilege tax is a matter of concern to all areas of Florida and the Legislature intends this act to be a general law authorization of the tax within the meaning of s. 9, Art. VII of the State Constitution and that payment of the tax complies with the obligations of owners and users of land under s. 7(b), Art. II of the State Constitution.

(7) C-139 AGRICULTURAL PRIVILEGE TAX.—

(a) There is hereby imposed an annual C-139 agricultural privilege tax for the privilege of conducting an agricultural trade or business on:

1. All real property located within the C-139 Basin that is classified as agricultural under the provisions of chapter 193; and

2. Leasehold or other interests in real property located within the C-139 Basin owned by the United States, the state, or any agency thereof permitting the property to be used for agricultural purposes in a manner that would result in such property being classified as agricultural under the provisions of chapter 193 if not governmentally owned, whether or not such property is actually classified as agricultural under the provisions of chapter 193.

It is hereby determined by the Legislature that the privilege of conducting an agricultural trade or business on such property constitutes a reasonable basis for imposing the C-139 agricultural privilege tax and that logical differences exist between the agricultural use of such property and the use of other property within the C-139 Basin for residential or nonagricultural

commercial use. The C-139 agricultural privilege tax shall constitute a lien against the property, or the leasehold or other interest in governmental property permitting such property to be used for agricultural purposes, described on the C-139 agricultural privilege tax roll. The lien shall be in effect from January 1 of the year the tax notice is mailed until discharged by payment and shall be equal in rank and dignity with the liens of all state, county, district, or municipal taxes and non-ad valorem assessments imposed pursuant to general law, special act, or local ordinance and shall be superior in dignity to all other liens, titles, and claims.

(b) The C-139 agricultural privilege tax, other than for leasehold or other interests in governmental property permitting such property to be used for agricultural purposes, shall be collected in the manner provided for ad valorem taxes. By September 15 of each year, the governing board of the district shall certify by resolution a C-139 agricultural privilege tax roll on compatible electronic medium to the tax collector of each county in which a portion of the C-139 Basin is located. The district shall also produce one copy of the roll in printed form which shall be available for inspection by the public. The district shall post the C-139 agricultural privilege tax for each parcel on the roll. The tax collector shall not accept any such roll that is not certified on compatible electronic medium and that does not contain the posting of the C-139 agricultural privilege tax for each parcel. It is the responsibility of the district that such rolls be free of errors and omissions. Alterations to such rolls may be made by the executive director of the district, or a designee, up to 10 days before certification. If the tax collector or any taxpayer discovers errors or omissions on such roll, such person may request the district to file a corrected roll or a correction of the amount of any C-139 agricultural privilege tax. Other than for leasehold or other interests in governmental property permitting such property to be used for agricultural purposes, C-139 agricultural privilege taxes collected pursuant to this section shall be included in the combined notice for ad valorem taxes and non-ad valorem assessments provided for in s. 197.3635. Such C-139 agricultural privilege taxes shall be listed in the portion of the combined notice utilized for non-ad valorem assessments. A separate mailing is authorized only as a solution to the most exigent factual circumstances. However, if a tax collector cannot merge a C-139 agricultural privilege tax roll to produce such a notice, the tax collector shall mail a separate notice of C-139 agricultural privilege taxes or shall direct the district to mail such a separate notice. In deciding whether a separate mailing is necessary, the tax collector shall consider all costs to the district and taxpayers of such a separate mailing and the adverse effects to the taxpayers of delayed and multiple notices. The district shall bear all costs associated with any separate notice. C-139 agricultural privilege taxes collected pursuant to this section shall be subject to all collection provisions of chapter 197, including provisions relating to discount for early payment, prepayment by installment method, deferred payment, penalty for delinquent payment, and issuance and sale of tax certificates and tax deeds for nonpayment. C-139 agricultural privilege taxes for leasehold or other interests in property owned by the United States, the state, or any agency thereof permitting such property to be used for agricultural purposes shall be included on the notice provided pursuant to s. 196.31, a copy of which shall be provided to lessees or other interestholders registering with the district, and shall be collected

from the lessee or other appropriate interestholder and remitted to the district immediately upon collection. C-139 agricultural privilege taxes included on the statement provided pursuant to s. 196.31 shall be due and collected on or prior to the next April 1 following provision of the notice. Proceeds of the C-139 agricultural privilege taxes shall be distributed by the tax collector to the district. Each tax collector shall be paid a commission equal to the actual cost of collection, not to exceed 2 percent, on the amount of C-139 agricultural privilege taxes collected and remitted. Notwithstanding any general law or special act to the contrary, C-139 agricultural privilege taxes shall not be included on the notice of proposed property taxes provided in s. 200.069.

(c)1. The initial C-139 agricultural privilege tax roll shall be certified for the tax notices mailed in November 1994. The C-139 agricultural privilege taxes for the tax notices mailed in November 1994 through November 2002 ~~2013~~ shall be computed by dividing $654,656 by the number of acres included on the C-139 agricultural privilege tax roll for such year, excluding any property located within the C-139 Annex.

2. The C-139 agricultural privilege taxes for the tax notices mailed in November 2003 through November 2013 shall be computed by dividing $654,656 by the number of acres included on the C-139 agricultural privilege tax roll for November 2001, excluding any property located within the C-139 Annex.

3. The C-139 agricultural privilege taxes for the tax notices mailed in November 2014 and thereafter shall be $1.80 per acre.

(d) For purposes of this paragraph, "vegetable acreage" means, for each tax year, any portion of a parcel of property used for a period of not less than 8 months for the production of vegetable crops, including sweet corn, during the 12 months ended September 30 of the year preceding the tax year. Land preparation, crop rotation, and fallow periods shall not disqualify property from classification as vegetable acreage if such property is actually used for the production of vegetable crops.

1. If either the Governor, the President of the United States, or the United States Department of Agriculture declares the existence of a state of emergency or disaster resulting from extreme natural conditions impairing the ability of vegetable acreage to produce crops, payment of the C-139 agricultural privilege taxes imposed for the privilege of conducting an agricultural trade or business on such property shall be deferred for a period of 1 year, and all subsequent annual payments shall be deferred for the same period.

a. If the declaration occurs between April 1 and October 31, the C-139 agricultural privilege tax to be included on the next annual tax notice will be deferred to the subsequent annual tax notice.

b. If the declaration occurs between November 1 and March 31 and the C-139 agricultural privilege tax included on the most recent tax notice has not been paid, such C-139 agricultural privilege tax will be deferred to the next annual tax notice.

c. If the declaration occurs between November 1 and March 31 and the C-139 agricultural privilege tax included on the most recent tax notice has been paid, the C-139 agricultural privilege tax to be included on the next annual tax notice will be deferred to the subsequent annual tax notice.

2. In the event payment of C-139 agricultural privilege taxes is deferred pursuant to this paragraph, the district must record a notice in the official records of each county in which vegetable acreage subject to such deferment is located. The recorded notice must describe each parcel of property as to which C-139 agricultural privilege taxes have been deferred and the amount deferred for such property. If all or any portion of the property as to which C-139 agricultural privilege taxes have been deferred ceases to be classified as agricultural under the provisions of chapter 193 or otherwise subject to the C-139 agricultural privilege tax, all deferred amounts must be included on the tax notice for such property mailed in November of the first tax year for which such property is not subject to the C-139 agricultural privilege tax. After a property owner has paid all outstanding C-139 agricultural privilege taxes, including any deferred amounts, the district shall provide the property owner with a recordable instrument evidencing the payment of all outstanding amounts.

3. The owner, lessee, or other appropriate interestholder shall file an application with the executive director of the district prior to July 1 for classification of a portion of the property as vegetable acreage on the C-139 agricultural privilege tax roll to be certified for the tax notice mailed in November of the same calendar year and shall have the burden of proving the number of acres used for the production of vegetable crops during the year in which incentive credits are determined and the period of such use. The governing board of the district shall deny or grant the application by resolution adopted prior to or at the time of the adoption of its resolution certifying the annual C-139 agricultural privilege tax roll to the appropriate tax collector.

4. This paragraph does not relieve vegetable acreage from the performance of best management practices specified in chapter 40E-63, Florida Administrative Code.

(e) Any owner, lessee, or other appropriate interestholder of property subject to the C-139 agricultural privilege tax may contest the C-139 agricultural privilege tax by filing an action in circuit court.

1. No action may be brought to contest the C-139 agricultural privilege tax after 60 days from the date the tax notice that includes the C-139 agricultural privilege tax is mailed by the tax collector. Before an action to contest the C-139 agricultural privilege tax may be brought, the taxpayer shall pay to the tax collector the amount of the C-139 agricultural privilege tax which the taxpayer admits in good faith to be owing. The tax collector shall issue a receipt for the payment and the receipt shall be filed with the complaint. Payment of an C-139 agricultural privilege tax shall not be deemed an admission that such tax was due and shall not prejudice the right to bring a timely action to challenge such tax and seek a refund. No action to contest the C-139 agricultural privilege tax may be maintained, and such

action shall be dismissed, unless all C-139 agricultural privilege taxes imposed in years after the action is brought, which the taxpayer in good faith admits to be owing, are paid before they become delinquent. The requirements of this paragraph are jurisdictional.

2. In any action involving a challenge of the C-139 agricultural privilege tax, the court shall assess all costs. If the court finds that the amount of tax owed by the taxpayer is greater than the amount the taxpayer has in good faith admitted and paid, it shall enter judgment against the taxpayer for the deficiency and for interest on the deficiency at the rate of 12 percent per year from the date the tax became delinquent. If it finds that the amount of tax which the taxpayer has admitted to be owing is grossly disproportionate to the amount of tax found to be due and that the taxpayer's admission was not made in good faith, the court shall also assess a penalty at the rate of 25 percent of the deficiency per year from the date the tax became delinquent. The court may issue injunctions to restrain the sale of property for any C-139 agricultural privilege tax which appears to be contrary to law or equity.

(f) Notwithstanding any contrary provisions in chapter 120, or any provision of any other law, an action in circuit court shall be the exclusive remedy to challenge the assessment of an C-139 agricultural privilege tax and owners of property subject to the C-139 agricultural privilege tax shall have no right or standing to initiate administrative proceedings under chapter 120 to challenge the assessment of an C-139 agricultural privilege tax including specifically, and without limitation, the annual certification by the district governing board of the C-139 agricultural privilege tax roll to the appropriate tax collector, the denial of an application for exclusion from the C-139 agricultural privilege tax, and the denial of any application for classification as vegetable acreage, deferment of payment for vegetable acreage, or correction of any alleged error in the C-139 agricultural privilege tax roll.

(g) In recognition of the findings set forth in subsection (1), the Legislature finds that the assessment and use of the C-139 agricultural privilege tax is a matter of concern to all areas of Florida and the Legislature intends this section to be a general law authorization of the tax within the meaning of s. 9, Art. VII of the State Constitution.

(10) LONG-TERM COMPLIANCE PERMITS.—By December 31, 2006, the department and the district shall take such action as may be necessary to implement the pre-2006 projects and strategies of the Long-Term Plan so that water delivered to the Everglades Protection Area achieves in all parts of the Everglades Protection Area state water quality standards, including the phosphorus criterion and moderating provisions. ~~in all parts of the Everglades Protection Area.~~

(a) By December 31, 2003, the district shall submit to the department an application for permit modification to incorporate proposed changes to the Everglades Construction Project and other district works delivering water to the Everglades Protection Area as needed to implement the pre-2006 projects and strategies of the Long-Term Plan in all permits issued by the department, including the permits issued pursuant to subsection (9). These

changes shall be designed to achieve state water quality standards, including the phosphorus criterion and moderating provisions, to the maximum extent practicable. Under no circumstances shall the project or strategy cause or contribute to violation of state water quality standards. During the implementation of the initial phase of the Long-Term Plan, permits issued by the department shall be based on BAPRT, and shall include technology-based effluent limitations consistent with the Long-Term Plan, as provided in subparagraph (4)(e)3. ~~By December 31, 2003, the district shall submit to the department a permit modification to incorporate proposed changes to the Everglades Construction Project and the permits issued pursuant to subsection (9). These changes shall be designed to achieve compliance with the phosphorus criterion and the other state water quality standards by December 31, 2006.~~

~~(b) If the Everglades Construction Project or other discharges to the Everglades Protection Area are not in compliance with state water quality standards, the permit application shall include:~~

~~1. A plan for achieving compliance with the phosphorus criterion in the Everglades Protection Area.~~

~~2. A plan for achieving compliance in the Everglades Protection Area with state water quality standards other than the phosphorus criterion.~~

~~3. Proposed cost estimates for the plans referred to in subparagraphs 1. and 2.~~

~~4. Proposed funding mechanisms for the plans referred to in subparagraphs 1. and 2.~~

~~5. Proposed schedules for implementation of the plans referred to in subparagraphs 1. and 2.~~

(b)~~(c)~~ If the Everglades Construction Project or other discharges to the Everglades Protection Area are in compliance with state water quality standards, including the phosphorus criterion, the permit application shall include:

1. A plan for maintaining compliance with the phosphorus criterion in the Everglades Protection Area.

2. A plan for maintaining compliance in the Everglades Protection Area with state water quality standards other than the phosphorus criterion.

(16) DEFINITION OF C-139 BASIN.—For purposes of this section:

(a) "C-139 Basin" or "Basin" means the following described property: beginning at the intersection of an easterly extension of the south bank of Deer Fence Canal with the center line of South Florida Water Management District's Levee 3 in Section 33, Township 46 South, Range 34 East, Hendry County, Florida; thence, westerly along said easterly extension and along the South bank of said Deer Fence Canal to where it intersects the center line of State Road 846 in Section 33, Township 46 South, Range 32 East;

thence, departing from said top of bank to the center line of said State Road 846, westerly along said center line of said State Road 846 to the West line of Section 4, Township 47 South, Range 31 East; thence, northerly along the West line of said section 4, and along the west lines of Sections 33 and 28, Township 46 South, Range 31 East, to the northwest corner of said Section 28; thence, easterly along the North line of said Section 28 to the North one-quarter (N¼) corner of said Section 28; thence, northerly along the West line of the Southeast one-quarter (SE¼) of Section 21, Township 46 South, Range 31 East, to the northwest corner of said Southeast one-quarter (SE¼) of Section 21; thence, easterly along the North line of said Southeast one-quarter (SE¼) of Section 21 to the northeast corner of said Southeast one-quarter (SE¼) of Section 21; thence, northerly along the East line of said Section 21 and the East line of Section 16, Township 46 South, Range 31, East, to the northeast corner thereof; thence, westerly along the North line of said Section 16, to the northwest corner thereof; thence, northerly along the West line of Sections 9 and 4, Township 46 South, Range 31, East, to the northwest corner of said Section 4; thence, westerly along the North lines of Section 5 and Section 6, Township 46 South, Range 31 East, to the South one-quarter (S¼) corner of Section 31, Township 45 South, Range 31 East; thence, northerly to the South one-quarter (S¼) corner of Section 30, Township 45 South, Range 31 East; thence, easterly along the South line of said Section 30 and the South lines of Sections 29 and 28, Township 45 South, Range 31 East, to the Southeast corner of said Section 28; thence, northerly along the East line of said Section 28 and the East lines of Sections 21 and 16, Township 45 South, Range 31 East, to the Northwest corner of the Southwest one-quarter of the Southwest one-quarter (SW¼ of the SW ¼) of Section 15, Township 45 South, Range 31 East; thence, northeasterly to the east one-quarter (E¼) corner of Section 15, Township 45 South, Range 31 East; thence, northerly along the East line of said Section 15, and the East line of Section 10, Township 45 South, Range 31 East, to the center line of a road in the Northeast one-quarter (NE¼) of said Section 10; thence, generally easterly and northeasterly along the center line of said road to its intersection with the center line of State Road 832; thence, easterly along said center line of said State Road 832 to its intersection with the center line of State Road 833; thence, northerly along said center line of said State Road 833 to the north line of Section 9, Township 44 South, Range 32 East; thence, easterly along the North line of said Section 9 and the north lines of Sections 10, 11 and 12, Township 44 South, Range 32 East, to the northeast corner of Section 12, Township 44 South, Range 32 East; thence, easterly along the North line of Section 7, Township 44 South, Range 33 East, to the center line of Flaghole Drainage District Levee, as it runs to the east near the northwest corner of said Section 7, Township 44 South, Range 33 East; thence, easterly along said center line of the Flaghole Drainage District Levee to where it meets the center line of South Florida Water Management District's Levee 1 at Flag Hole Road; thence, continue easterly along said center line of said Levee 1 to where it turns south near the Northwest corner of Section 12, Township 44 South, Range 33 East; thence, Southerly along said center line of said Levee 1 to where the levee turns east near the Southwest corner of said Section 12; thence, easterly along said center line of said Levee 1 to where it turns south near the Northeast corner of Section 17, Township 44 South, Range 34 East; thence, southerly along said center line of said Levee

1 and the center line of South Florida Water Management District's Levee 2 to the intersection with the north line of Section 33, Township 45 South, Range 34 East; thence, easterly along the north line of said Section 33 to the northeast corner of said Section 33; thence, southerly along the east line of said Section 33 to the southeast corner of said Section 33; thence, southerly along the east line of Section 4, Township 46 South, Range 34 East to the southeast corner of said Section 4; thence, westerly along the south line of said Section 4 to the intersection with the centerline of South Florida Water Management District's Levee 2; thence, southerly along said Levee 2 centerline and South Florida Water Management District's Levee 3 centerline to the POINT OF BEGINNING.

(b) Sections 21, 28, and 33, Township 46 South, Range 31 East, are not included within the boundary of the C-139 Basin.

(c)~~(b)~~ If the district issues permits in accordance with all applicable rules allowing water from the "C-139 Annex" to flow into the drainage system for the C-139 Basin, the C-139 Annex shall be added to the C-139 Basin for all tax years thereafter, commencing with the next C-139 agricultural privilege tax roll certified after issuance of such permits. "C-139 Annex" means the following described property: that part of the S.E. ¼ of Section 32, Township 46 South, Range 34 East and that portion of Sections 5 and 6, Township 47 South, Range 34 East lying west of the L-3 Canal and South of the Deer Fence Canal; all of Sections 7, 17, 18, 19, 20, 28, 29, 30, 31, 32, 33, and 34, and that portion of Sections 8, 9, 16, 21, 22, 26, 27, 35, and 36 lying south and west of the L-3 Canal, in Township 47 South, Range 34 East; and all of Sections 2, 3, 4, 5, 6, 8, 9, 10, and 11 and that portion of Section 1 lying south and west of the L-3 Canal all in Township 48 South, Range 34 East.

(17) SHORT TITLE.—This section shall be known as the "Everglades Forever Act."

Section 2. Section 3 of chapter 96-412, Laws of Florida, and section 84 of chapter 96-321, Laws of Florida, are repealed.

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor May 20, 2003.

Filed in Office Secretary of State May 20, 2003.